TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~[illegible]~~ 6 2

CHARLES MORAN, APPELLANT,

vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED FEBRUARY [illegible], 1890.

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1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and eastern division of the southern district of Ohio, begun and held in the court-rooms, in the city of Cincinnati, on the first Tuesday of December, being the sixth day of that month, in the year of our Lord one thousand eight hundred and eighty-seven, and in the one hundred and twelfth year of the Independence of the United States of America—present, the Honorable Howell E. Jackson, district judge—among the proceedings had were the following:

CHARLES MORAN, Complainant,
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY Company, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, *et al.*, Defendants. } In Equity.

Be it remembered that heretofore, to wit, on the 9th day of September, in the year of our Lord one thousand eight hundred
2 and eighty-five, came the complainant, Charles Moran, by his counsel, and filed in the clerk's office of the said court his certain bill of complaint against the defendants, The Cincinnati and Muskingum Valley Railway Company, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, *et al.* Said bill of complaint is in the words and figures following, to wit:

Bill of Complaint.

Circuit Court of the United States, Sixth Circuit, Southern District of Ohio, Eastern Division.

CHARLES MORAN, Complainant,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY Company, The Cincinnati and Muskingum Valley Railway Company, Samuel Jeans, The Trustees of Cadiz Township, Harrison County, Ohio; The Trustees of Rumley Township, Harrison County, Ohio; The Trustees of German Township, Harrison County, Ohio; The Trustees of Steubenville Township, Jefferson County, Ohio, and The City of Steubenville, Respondents. } In Equity.

Bill of complaint of Charles Moran.

To the honorable the circuit court of the United States in and for the sixth circuit, southern district of Ohio, eastern division:

Humbly complaining showeth unto your honors your orator, Charles Moran, that he is a citizen and resident of the State of New York, and that the Pittsburgh, Cincinnati and St. Louis Rail-
3 way Company is a corporation organized under the laws of the State of Ohio and having its principal office within said

district and division, and that the Cincinnati and Muskingum Valley Railway Company is a corporation organized under the laws of the State of Ohio and having its principal office within said district and division, and that Samuel Jeans is a citizen and resident of the State of Pennsylvania, and that the trustees of Cadiz township, Harrison county, Ohio; the trustees of Rumley township, Harrison county, Ohio; the trustees of German township, Harrison county, Ohio; the trustees of Steubenville Township, Jefferson county, Ohio, and the city of Steubenville, Jefferson county, Ohio, are townships and municipal corporations respectively organized under the laws of the State of Ohio; and the plaintiff, Charles Moran, as trustee and in his own behalf and that of the holder of bonds of the Cincinnati and Muskingum Valley Railway Company secured by the mortgage hereinafter described, brings his bill in equity in this court against the said railway companies, the said Jeans, and the said townships and municipal corporations, and says that on the first day of September, one thousand eight hundred and seventy, by deed of mortgage of that date, duly executed and acknowledged under the corporate seal of the Cincinnati and Muskingum Valley Railway Company and recorded in all the counties through which the line of said railway runs, the said Cincinnati and Muskingum Valley Railway Company conveyed unto J. Edgar Thomson and Charles Moran aforesaid, as joint tenants, and to the survivor of them, in fee simple, all the right, title, and interest of the said railway company in and to its railway, extending from the town of Morrow to a point at or near the town of Dresden, in the county of Muskingum, situate and being in the counties of Warren, Clinton, Fayette,
4 Pickaway, Fairfield, Perry, and Muskingum, with the appurtenances, then completed or thereafter to be constructed, together with all the lands, tenements, hereditaments, fixtures, buildings, cars, engines, tools and machinery, franchises, interest, and estate of the said railway company appertaining thereto which the said railway company then possessed and owned or might thereafter acquire, in trust, nevertheless, for the persons and corporations and for the benefit and security of the persons and corporations who should hold or own certain bonds in said mortgage described and hereinafter to be more fully described, the intention of said mortgage being thereby declared to be that all of said bonds should be equally secured thereby in proportion to the amount of the principal thereof outstanding and unpaid, with the interest on said principal, accrued and unpaid, and that until default should be made in respect to something therein to be done or kept by the said railway company said railway company should be suffered and permitted to possess and operate, manage, and enjoy its said railway, with its appurtenances and appendages, and to take and use the said rents, income, profits, and issues thereof in the same manner and with the same effect as if said mortgage had not been made; but said mortgage was subject to an express condition of defeasance that if the said railway company, mortgagor, should well and truly pay to the holders of said bonds the several and respective sums of money and interest due and accruing on the day and according to the conditions

in said several bonds expressed, then and thenceforth said indenture and estate thereby created should become void.

And the complainant further states that said J. Edgar
5 Thomson and Charles Moran, under their signatures and seals, duly executed said mortgage and accepted the trusts thereby created, and that they duly acknowledged the said deed of mortgage and thereby became vested as joint tenants to them and to the survivor of them of all the estate aforesaid in trust for the uses aforesaid and upon the condition of defeasance aforesaid.

And the complainant further states that afterward and more than ten years ago said J. Edgar Thomson departed this life, and that thereby and by force of said mortgage the estate thereby created, with the trust thereof and subject to the conditions thereof, devolved upon this complainant solely, who accepted the same and has continued to perform the duties of said trust and is now performing the same.

And the complainant further states that the bonds secured by said mortgage were provided for by the resolution of said company recited in said mortgage, and were to be and were issued to the amount of one and one-half millions of dollars—that is to say, fifteen hundred bonds of one thousand dollars each, bearing date September 1, 1870, payable to J. Edgar Thomson or bearer, in the city of New York, thirty years from the first day of January, one thousand eight hundred and seventy-one, with interest, at the rate of seven per cent. per annum, from the first day of January, one thousand eight hundred and seventy-one, to be paid in the city of New York semi-annually, according to the interest warrants thereto attached, with the signature of the secretary in lithograph. The complainant hereunto attaches a copy of one of the bonds aforesaid, with a single coupon thereon, such coupon being a specimen of the other coupons and differing from them only in date of maturity,
which bond is precisely like all the other bonds of said issue
6 except in number, and said bond and coupon are marked Exhibit "A," and he prays that the same may be taken as part of this bill in equity; and this complainant further annexes hereto a copy of said mortgage, marked Exhibit "B," and prays that the same may be taken as part of this bill in equity as fully as if recited at length and set forth herein.

And the complainant further states that of said bonds thus outstanding he is the holder in his own right of more than four hundred, and that other persons and corporations, including the Pennsylvania Company, which Pennsylvania Company is the holder of more than three-quarters of the stock of the Pittsburgh, Cincinnati and St. Louis Railway Company, are the holders and owners of the residue of said bonds, said Pennsylvania Company being the holder and owner of a majority—namely, seven hundred and fifty-two—of said bonds and of eight-thirteenths of the stock of the Cincinnati and Muskingum Valley Railway Company.

And the complainant further states that in December, 1872, the Cincinnati and Muskingum Valley Railway Company and the Pittsburgh, Cincinnati and St. Louis Railway Company entered into an

indenture of lease in pursuance of authority lawfully conferred upon said corporation by the stockholders thereof, a copy of which lease and contract is hereto annexed, marked Exhibit "C," and this complainant prays that the same may be taken as part of this bill in chancery, as if fully set out and recited herein, and by said lease the Cincinnati and Muskingum Valley Railway Company leased to the Pittsburgh, Cincinnati and St. Louis Railway Company the railway of the first-named company then constructed and to be constructed and ready for use and operation and to become ready for use and operation from its point of connection with the railway of the lessee company, at or near Dresden, in Muskingum
7 county, Ohio, to its terminus at Morrow, Warren county, Ohio, together with all the depots, stations, buildings, appurtenances, and property, real and personal, to said demised railway belonging and appertaining, as well that then owned as that hereafter to be acquired by the said first-named railway company, at and between the said before-mentioned points; to have and to hold the said demised property, real and personal, unto the said The Pittsburgh, Cincinnati, and St. Louis Railway Company and its successors and assigns to and for the full end and term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy-three; and by said lease and contract full and exclusive power, right, and authority was conferred by the lessor upon the lessee company to operate the said railway, to fix, charge, and collect all of the tolls, fares, and freight thereon, and to have, use, exercise, and enjoy all the rights, powers, and authority of the lessor company, and all other lawful powers and privileges, as fully as might have been used, exercised, or enjoyed by the lessor company if said lease and contract had not been made, and the lessee company guaranteed that it would use, manage, maintain, operate, and keep in public use the said railway and appurtenances, and so efficiently work and operate it and the equipment thereon as to promptly and fully accommodate the business thereon, and collect and receive all the said tolls, freight charges, and dues, and apply them, first, to the repair, maintenance, and perpetuation for public use of the railway and property, and to the expense of working, using, managing, maintaining, operating, and running the same, including eight per cent. per annum upon the cost of such engines as the lessee company at its own expense might put on said road and the usual charge for car service for cars actually used and employed thereon
8 and not owned by said lessor company; to premiums for insurance and all tolls, taxes, or assessments levied or to be levied by the laws of the United States or the State of Ohio thereon; secondly, to pay any surplus to the treasurer of the lessor company: Provided, however, that in the event of the net earnings of the line of road thereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part, being the fifteen hundred thousand dollars of first-mortgage bonds hereinbefore described and secured by the mortgage to said Thomson and Moran, as the said interest matured, the lessee company should advance the needful means to pay the coupons at maturity, charg-

ing any such advance over the net earnings in open account, to be returned out of the subsequent earnings and not otherwise, and for the further provision of said lease and contract this complainant refers to said Exhibit "C," which is a copy thereof.

And this complainant further says that at the meeting of the stockholders of the Pittsburgh, Cincinnati and St. Louis Railway Company, wherein said lease was submitted for approval and ratification by said stockholders, the said Samuel Jeans, defendant herein, being then, as now, a stockholder of the said last-named company, voted against said ratification.

And the complainant further states that said lease went into and is in full and complete operation; that said Pittsburgh, Cincinnati and St. Louis Railway Company took possession of said leased property soon after the date of said lease, and from that time has continued to manage and operate and has possessed itself of the tolls, fares, and freight derived from the said railway property, and has in all respects been in the beneficial use and enjoyment of the said
9 railway property, rights, privileges, and franchises, subject, however, to the provisions of the lease and contract and the mortgage aforesaid.

And the complainant further states that from the date of said lease down to and including the 30th day of June, 1885, all the provisions of said lease have been fully kept, and none of the same have been violated to the knowledge of this complainant, and that the said lease and the performance thereof have been accepted by this complainant and by all the holders of the said first-mortgage bonds as an additional and further muniment of title, and ratified and adopted by them, and that the said lease and contract constitute a valuable muniment of title as part of the estate and property mortgaged to the complainant.

And the complainant further states that under and by force of the execution of said lease from the time of its execution until June 30, 1885, all the coupons aforesaid, maturing upon the bonds aforesaid, being at the rate of fifty-two thousand five hundred dollars semi-annually, have been paid by the lessee aforesaid to the said bondholders, all through the agency of this complainant, except the coupons or interest warrants aforesaid held by the said Pennsylvania Company, which have been settled between the said Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, and the said Pennsylvania Company without the intervention of this complainant; that the course of said business has been as follows: Each six months, in anticipation of the maturity of said coupons, the treasurer of said Pittsburgh, Cincinnati and St. Louis Railway Company has furnished or advanced to this complainant the interest upon all of said bonds except those so as aforesaid held by the Pennsylvania Company, and this complainant has distributed and paid the same at the maturity of said coupons to the holders of
10 said coupons, and the said holders of said coupons have received the same with full knowledge that the same were derived from the operations of the execution of said lease, and not from the earnings of said mortgagor company outside of said lease,

And the complainant further states that faith and credit have thus been given to said mortgage bonds, and they have been held and have obtained circulation and passed from hand to hand by sales and pledges in the confidence of the trust reposed in said lease and contract and in the execution thereof by said lessee company.

And the complainant further says that in the year 1877, said lease having proved disastrous and not profitable in its direct operation to the lessee company, said Pittsburgh, Cincinnati and St. Louis Railway Company, through the agency of the Pennsylvania Company, owning the majority of said bonds and the majority of the stock in the Cincinnati and Muskingum Valley Railway Company, undertook to cancel and rescind said lease, but, being sued by this complainant for its enforcement, desisted from said attempt, but that ever since that date and until now the said Pittsburgh, Cincinnati and St. Louis Railway Company and the said Pennsylvania Company, its principal stockholder, have been desirous of avoiding the obligation imposed by said lease of paying said coupons, and that thereupon and to that end they have procured the said Samuel Jeans, the trustees of Cadiz township, Harrison county, Ohio; the trustees of Rumley township, Harrison county, Ohio; the trustees of German township, Harrison county, Ohio; the trustees of Steubenville township, Jefferson county, Ohio, and the city of Steubenville, Jefferson county, Ohio, to bring a suit in the court of common pleas of Jefferson county, Ohio, against the said The Pittsburgh, Cincinnati and St. Louis Railway Company and the Cincin-
11 nati and Muskingum Valley Railway Company, but to which this complainant and none of the bondholders aforesaid, except the Pittsburgh, Cincinnati and St. Louis Railway Company, are made defendants, which suit was brought in said court of common pleas on the 29th day of June, 1885, and is now pending therein, and thereupon they procured by collusion with said Jeans and others, plaintiffs, they interposing no resistance, a temporary injunction to restrain the payment of the interest upon said mortgage bonds due on the 1st day of July, 1885, and said temporary injunction still continues, and will be made perpetual by like collusion.

And the claimant says that the suit aforesaid is a fraud upon the rights of this complainant and of the bondholders aforesaid, who are not made parties thereto and to whom no opportunity has been given to defend in said cause. This complainant, for the benefit of the bondholders aforesaid, is the holder and owner in equity of said lease as security for the payment of said mortgage bonds and is entitled to enforce the provisions thereof.

The complainant further says that the interest due upon said mortgage bonds upon the first day of July, 1885, being the sum of fifty-two thousand five hundred dollars, was not paid and is in default, and is held, owned, and claimed by the holders of all of the said bonds except the seven hundred and fifty-two so as aforesaid owned by the Pennsylvania Company, and that by such default the condition of defeasance of said mortgage has been broken and the estate of said mortgagee in said premises, including the rights of said mortgagor as lessor under said lease, has become absolute in

law, subject only to be redeemed upon payment of said interest and of the further installments of interest as they may accrue upon said bonds secured by said mortgage.

12 And the complainant further says that the Cincinnati and Muskingum Valley Railway Company is insolvent, and that its property, irrespective of said lease, is not of sufficient value to pay such mortgage bonds, and that the only method whereby the rights of this complainant can be secured to him is by the collection of said rents and the sale of said property, with the benefit of said lease and contract, and the right to receive the annual rental for the term of said lease, in accordance with the provisions of said lease.

Wherefore and forasmuch as cases of this kind are cognizable only in courts of equity and the complainant is without remedy at law, the complainant brings this his bill in equity against the said Pittsburgh, Cincinnati and St. Louis Railway Company, the Cincinnati and Muskingum Valley Railway Company, Samuel Jeans, the trustees of Cadiz township, Harrison county, Ohio; the trustees of Rumley township, Harrison county, Ohio; the trustees of German township, Harrison county, Ohio; the trustees of Steubenville township, Jefferson county, Ohio, and the city of Steubenville, Jefferson county, Ohio, defendants, and the complainant prays that they may be made defendants hereto; that the writ of subpœna may issue against each of said defendants; and the complainant prays for the appointment of a receiver to take possession of and collect the rental aforesaid, payable by the Pittsburgh, Cincinnati and St. Louis Railway Company to the Cincinnati and Muskingum Valley Railway Company under and by virtue of the provisions of said lease during the pendency of this suit, and that upon final decree it may be held and established, notwithstanding said collusive suit and anything done therein, that the said lease and contract in equity belong and appertain to the holders of said mortgage bonds and to this

13 plaintiff, as their trustee, as a muniment and part of their title, and that said lease and contract are valid, and that said holders and this complainant are entitled to enforce the same and to collect said rents as security for said bonds, and that all the estate and reversion of the lessor in said railway property, with the benefit of the lease aforesaid and the right to receive the rents accruing upon said lease and to enforce the performance of its covenants, may be sold and disposed of by a master commissioner to be appointed by this court, but without dispossessing the said lessee company of its possession or any of its rights under said lease, and for such other and further relief as in equity and good conscience the complainant may prove to be entitled to.

HOADLY, JOHNSON AND COLSTON,
Solicitors and of Counsel for Complainant.

EXHIBIT A.

UNITED STATES OF AMERICA, *State of Ohio.*

Cincinnati and Muskingum Valley Railway Company.

No. —. *First-Mortgage Bond.* $1,000.

Payable first of January, 1901; interest at seven per cent. per annum, payable semi-annually on the first of January and first of July in each year.

Know all men by these presents that the Cincinnati and Muskingum Valley Railway Company doth owe unto J. Edgar Thomson or bearer the sum of one thousand dollars, for the payment of which sum in the city of New York, on the first day of January, in the year one thousand nine hundred and one, and of the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first day of January and first day of July in each and every year until said principal sum shall be paid, upon the presentation of the annexed interest warrants as they severally become due, it doth declare itself by these presents firmly bound, it being expressly understood that the stockholders of this company shall not be personally liable or held in any manner individually responsible for any portion of the principal or interest of this bond. Signed by the president and secretary and sealed with its seal the first day of September, 1870. This bond is made pursuant to a resolution of the board of directors.

(Signed) H. J. JEWETT, *President.*

[SEAL.] (Signed) J. A. LIPPINCOTT, *Secretary.*

We certify this bond is one of a series, numbered from one to fifteen hundred, of one thousand dollars each, issued by the Cincinnati and Muskingum Valley Railway Company, and is secured by a first mortgage to the subscribers, trustees, dated first day of
14 September, 1870, covering its railroad and appurtenances constructed from the town of Morrow, Warren county, Ohio, to the city of Zanesville, Muskingum county, formerly owned by the Cincinnati and Zanesville Railroad Company, and a line of railroad in the course of construction from Zanesville to a point at or near the town of Dresden, in Muskingum county, connecting the same with the road of the P., C. and St. Louis Railway Company, with the appurtenances, together with equipment, after-acquired personal property, etc. The said mortgage is duly recorded in the several counties through which the said railroad is constructed and being constructed.

(Signed) J. EDGAR THOMSON,
(Signed) CHAS. MORAN, *Trustees.*

(The United States revenue stamps are affixed and canceled on the mortgage given as security for these bonds.)

(*Coupon.*) ($35.00.

On the first day of ——, —, the Cincinnati and Muskingum Valley Railway Company will pay the bearer, in the city of New York, on surrender hereof, thirty-five dollars for interest due on that day upon its first-mortgage bond No. —.

(Signed) J. A. LIPPINCOTT, *Sec'y.*

EXHIBIT B.

This indenture, made this the first day of September, in the year one thousand eight hundred and seventy, between the Cincinnati and Muskingum Valley Railway Company, a corporation of the State of Ohio, the party of the first part, and J. Edgar Thomson and Charles Moran, trustees of certain trusts hereinafter specified and provided, the party of the second part, witnesseth:

Whereas the party of the first part is duly authorized by its charter to construct, acquire, own, and operate a railroad into and through, among others, the counties of Warren, Clinton, Fayette, Pickaway, Fairfield, Perry, and Muskingum, and has purchased a certain railroad, with its appurtenances, extending from the city of Zanesville, in Muskingum county, to the town of Morrow, in Warren county, State of Ohio, formerly known as the Cincinnati and Zanesville Railroad, and thereby have created an unfunded debt; and whereas at a meeting of the board of directors of the said Cincinnati and Muskingum Valley Railway Company held on the 26th day of May, 1870, the said board adopted the following resolutions:

Resolution 1st. That there be issued bonds of this company to the amount of one and a half millions of dollars—that is to say, fifteen hundred bonds of one thousand dollars each—for the purposes hereinafter mentioned, signed by the president and secretary and authenticated, when issued, by the certificate of trustees, numbered consecutively, bearing date the first day of September, 1870, payable to J. Edgar Thomson or bearer, in the city of New York, thirty years from the first day of January, 1871, with interest, at the rate of seven per cent. per annum, from the first day of January, 1871, to be paid in the city of New York, semi-annually, according to the interest warrants thereto attached, with the signature of secretary in lithograph.

Resolution 2d. The said bonds shall, under the direction of the board of directors of the company, be negotiated for the purposes following:

To pay for the said Cincinnati and Zanesville railroad purchased by this company and to construct and extend their line of road, purchased as aforesaid, from the city of Zanesville, in Muskingum county, to a point connecting the same with the road of the Pittsburgh, Cincinnati and St. Louis Railway Company at or near the town of Dresden, in the same county, and for equipment, depots, depot grounds, and machinery for the proper working of the road.

Resolution 3d. That a deed of conveyance be prepared and signed by the president of the company, sealed with its seal and attested

by the secretary and acknowledged and delivered in the name and behalf of this company, conveying to J. Edgar Thomson and Chas. Moran and the survivor, etc., as trustees, the lines of road of this company, purchased and to be constructed as aforesaid, with the appurtenances and appendages thereunto attached, together with all the
16 property, real and personal, in said lines now owned or hereafter acquired, and all the franchises, privileges, and immunities of the said party of the first part therein, in trust that all of said bonds purporting on their face to be secured by this instrument shall have equal benefit of said conveyance and there shall be no preference or priority of lien among any of said bonds. The bonds shall contain an express stipulation that the stockholders of this company shall not be personally liable or held in any manner individually responsible for any portion of the principal or interest of said bonds. And whereas shareholders representing a majority of the share capital of the said Cincinnati and Muskingum Valley Railway Company have consented in writing and authorized the carrying into effect the above-recited resolutions of the board of directors and the execution of said mortgage and the issue of said bonds; and whereas the party of the first part has made and executed said bonds, to the amount of one and a half millions of dollars, of the numbers, form, denomination, and character prescribed in said resolutions of the board of directors of said company:

Now, therefore, in further pursuance of said resolutions and to the end and purpose of securing the payment of the principal and interest of said bonds as they may become due and payable—

This indenture witnesseth: That the party of the first part, in consideration of the premises and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey to the said party of the second part as joint tenants and to the survivor of them, his heirs and assigns, all the right, title, and interest of the said party of the first part in and to the railroad of the party of the first part, extending from the town of Morrow to a point at or near the town of Dresden, hereinabove described, situated and being in the counties of Warren, Clinton, Fayette, Pickaway, Fairfield, Perry, and Muskingum, with the appurtenances, now completed or hereafter to be constructed, together with all the lands, tenements, hereditaments, fixtures, buildings, cars, engines,
17 tools and machinery, franchises, privileges, interest, and estate of the first party appertaining thereto which the party of the first part now possesses and owns or may hereafter acquire—

In trust, nevertheless, for the persons and corporations and for the benefit and security of the persons and corporations who shall hold or own said bonds. The intention of these presents is and is hereby declared to be that all of said bonds shall be equally secured by these presents in proportion to the amount of the principal thereof outstanding and unpaid, with the interest on said principal accrued and unpaid, until default shall be made in respect to something herein to be done or kept by the party of the first part, it shall be suffered and permitted to possess and operate, manage and enjoy, its said railway, with its appurtenances and appendages, and to take and

use the rents, income, profits, and issues thereof in the same manner and with the same effect as if this deed had not been made;

And in trust that in case the said party of the first part shall fail to pay the interest or principal of the bonds aforesaid or any part thereof at any time when the same shall become due and payable, when demanded, then after ninety days from such default, on request of the holders of one-third of the outstanding bonds, the said J. Edgar Thomson and Charles Moran or the survivor of them and any other trustee or trustees who may lawfully succeed to the trusts of this deed may and shall enter into and take possession of all or any part of the premises by this indenture conveyed, and as the attorney or attorneys, agent or agents, of the said party of the first part, by themselves or their agents or substitutes, hold, use, manage, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and, after deducting all expenses of such use and management, repairs, alterations, and additions and a reasonable compensation to the trustees, apply the proceeds thereof to the payment *pro rata* of all principal and interest remaining due and unpaid on any of said bonds, and also shall, on the written request of the holders of at least one-half of the amount of the bonds secured by this mortgage, cause the premises hereby conveyed, or
18 so much thereof as may be necessary to pay and discharge all the principal and interest then due and unpaid on any of said bonds, to be sold at public auction in the city of Zanesville, giving at least sixty days' notice of the time and place and terms of such sale and of the specific property to be sold by publishing the same in at least two newspapers of general circulation in each of the cities of Philadelphia and New York and wherever else required by law, and execute to the purchaser or purchasers thereof, as attorney or attorneys for the said party of the first part or otherwise, a good and sufficient deed or deeds of conveyance in fee simple for the property sold, which shall be a bar against the said party of the first part, their successors and assigns, and all persons claiming under them of all right, title, interest, or claim, in law or equity, in or to the premises sold or any part thereof, and out of the proceeds of such sale shall, first, pay all the costs, charges, and expenses attending such sale and the execution of this trust and the management of said property, including a reasonable compensation to the trustees, and then shall pay all the interest and principal then remaining due and unpaid on any of the bonds aforesaid, and the residue, if any, shall restore to the party of the first part, its successors or assigns; and the said party of the first part hereby covenants to execute and deliver any further suitable conveyance or conveyances that may be requisite for carrying into effect the object of these presents, particularly for the more perfect assurance of any property hereafter acquired by the party of the first part and included in the description in this deed.

And, further, it is mutually agreed that the said party of the second part and any and every trustee who shall at any time have the execution of these trusts shall only be accountable for reasonable diligence in the discharge of any duties or services devolving on them

as such trustees, and shall not be responsible for the acts of any agent employed by them, such agent having been selected with reasonable discretion.

And, further, that they or any of them shall be entitled to a proper compensation for their services and responsibilities
19 in discharging the trusts aforesaid in case they or any of them shall be compelled to take possession of the premises or any part thereof or to manage the same or to make sale thereof as aforesaid.

And, further, in case of the death, incapacity, or refusal of the said second party to serve as trustees in the premises that a trustee may be agreed upon by instrument in writing between said party of the first part and a majority in amount of the holders of the bonds secured by this mortgage, or a trustee or trustees may be appointed by any court of record of the State of Ohio having jurisdiction in the matter, and the trustee or trustees so agreed upon or appointed shall succeed to all the right, title, interest, powers, and duties of the party of the second part hereto, and the said J. Edgar Thomson and Charles Moran or the survivor of them, his heirs and assigns, so unable or rufusing to act shall execute all requisite and suitable deeds and conveyances to transfer, convey to, and vest in the trustee or trustees so to be agreed upon or appointed all right, title, interest, claim, power, duty, or authority by this indenture vested in the said party of the second part:

Provided, nevertheless, and this indenture is upon this express condition, that if the said party of the first part shall well and truly pay to the holders of said bonds the several and respective sums of money and interest due and accruing on the day and according to the conditions therein expressed, then and thenceforth this indenture and estate hereby created shall become void.

In witness whereof the said Cincinnati and Muskingum Valley Railway Company, the party of the first part, has caused these presents to be executed and signed by the president of its company and attested by its secretary, for and in behalf of the company, and has caused the corporate seal of the company to be affixed hereto the day and year above written.

And the parties of the second part have hereunto set
20 their hands and affixed their seals the same day and year aforesaid.

CINCINNATI AND MUSKINGUM
RAILWAY COMPANY,
By HUGH J. JEWETT, *President.*

Attest: J. A. LIPPINCOTT, *Secretary.*

[SEAL OF CO.] J. EDGAR THOMSON. [L. S.]
CHAS. MORAN. [L. S.]

Signed, sealed, and acknowledged in the presence of—
W. C. QUINCY.
CHARLES C. GODDARD.
WM. H. CLARKSON.
CHARLES NETTLETON,
As to Charles Moran.

THE STATE OF OHIO, } ss:
Muskingum County, }

Be it remembered that on the twenty-ninth day of August, A. D. 1870, before me, the undersigned, a notary public, of the State of Ohio, of said county, personally appeared Hugh J. Jewett, to me known to be the president of the Cincinnati and Muskingum Valley Railway Company, and acknowledged the signing and sealing of the above conveyance, with the corporate seal of said company, to be his voluntary act and deed as said president and the voluntary act and deed of said company.

[SEAL OF NOTARY.] CHARLES C. GODDARD,
Notary Public.

STATE OF NEW YORK, } ss:
City and County of New York, }

Before me, the undersigned, a commissioner of the State of Ohio, duly commissioned and qualified, personally came the above-named Charles Moran, trustee and the party of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned as his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal this 31st day of August, A. D. 1870.

[COMMISSIONER'S SEAL.] CHARLES NETTLETON,
Commissioner for Ohio in New York,
117 *Broadway, New York City.*

21 STATE OF NEW YORK, } ss:
City and County of New York, }

Before me, Charles Nettleton, a commissioner of the State of Ohio, resident in said State and county, appeared the within-named Charles Moran and acknowledged the signing and sealing of the within mortgage and deed of trust to be his voluntary act and deed as trustee therein described.

In witness whereof I have hereunto set my hand and affixed my official seal this thirty-first day of August, one thousand eight hundred and seventy.

CHARLES NETTLETON,
Commissioner for Ohio in New York.

CITY OF PHILADELPHIA, } ss:
State of Pennsylvania, }

Before me, the undersigned, a notary public for the city of Philadelphia, in the State of Pennsylvania, duly commissioned and qualified, personally came the within-named J. Edgar Thomson, trustee and a party of the second part in the foregoing mortgage and deed of trust, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal,

and execute the same for the uses and purposes therein mentioned as his voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my notarial seal this fifteenth day of September, anno Domini 1870.

[SEAL OF NOTARY.] HENRY C. SPACKMAN,
Notary Public.

(Fifteen hundred dollars U. S. internal revenue stamps canceled.)

Received September 28, 1870, at 9.30 a. m. Recorded September 28, 1870, in records of mortgages for Muskingum county, Ohio, in Book 34, pp. 598, 599, 600, and 601.

J. H. MITCHELL, *Recorder*,
Per M. M. J.

Received September 29, 1870, at 11 o'clock a. m. Recorded September 30, 1870, in record of mortgages for Perry county, Ohio, in Book F, pages 492, 493, 494, 495, 496, and 497.

W. G. BUCKNER, *Recorder*.

22 Recorder's office, Fairfield county, Ohio.—Received October 12, A. D. 1870, at 11 o'clock a. m., and recorded next day in Mortgage Record No. 7, page 379, etc.

F. FISHBAUGH,
Recorder F. C.

Recorder's office, Pickaway county, Ohio.—Received for record October 14, A. D. 1870, at 3 o'clock p. m., and recorded October 21, A. D. 1870, in Book No. 8, pages 226, 227, 228, 229, and 230.

T. C. LYNCH,
R. P. C., O.

Recorder's office, Fayette county, Ohio.—Received October 22, 1870, at 3 o'clock p. m. Recorded October 25, 1870, on Mortgage Record "D," pages 14, 15, 16, 17, and 18.

Z. W. HEAGLER,
Recorder Fayette Co., O.

Recorder's office, Clinton county, Ohio.—Received for record October 27, 1870, at 3 o'clock p. m. Recorded October 29, 1870, in Mortgage Record "L," pages 61, 62, 63, 64, 65, 66, and 67.

WM. B. BRITTON,
R. C. C., O.,
Per D. J. FOLAND, *Deputy*.

Recorder's office, Warren county, Ohio.—Received for record November 7, 1870, at ¼ past 3 o'clock p. m., and recorded November 9, 1870, in Mortgage Record 15, pages 534–'8.

A. B. GOOCH, *R. W. C.*

23 EXHIBIT C.

Lease and Contract Between the Pittsburgh, Cincinnati and St. Louis Railway Company and the Cincinnati and Muskingum Valley Railway Company.

An indenture of lease made the — day of December, one thousand eight hundred and seventy-two (1872), between the Cincinnati and Muskingum Valley Railway Company, of the first part, and the Pittsburgh, Cincinnati and St. Louis Railway Company, of the second part.

Whereas the railways of the parties hereto connect directly each with the other, and said parties hereto are desirous to enter into a lease and contract with each other in respect to the use, management, and working of the railway of the party of the first part:

Now, this indenture witnesseth: That the party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of said party of the second part to be paid, kept, and performed, have leased, demised, and to farm let, and by these presents do lease, demise, and to farm let, unto the party of the second part and they take the railway of the party of the first part now constructed and to be constructed and ready for use and operation and to become ready for use and operation from its point of connection with the railway of the party of the second part, at or near Dresden, in Muskingum county, Ohio, to its terminus, at Morrow, Warren county, Ohio—

Together with all the depots, stations, buildings, appurtenances, and property, real and personal, to said demised railway belonging and appertaining (as well that now owned as that hereafter to be acquired by the said party of the first part at and between the said before-mentioned points):

24 To have and to hold the said demised property, real and personal, unto the party of the second part, their successors and assigns, to and for the full end and term, ninety-nine years, from the first day of January, A. D. one thousand eight hundred and seventy-three (1873).

That, in consideration of the premises, the party of the first part hereby covenants and agrees that the party of the second part shall at all times during the term aforesaid have full and exclusive power, right, and authority to use, manage, and work the said railway of said party of the first part, and shall have the right to fix the tolls thereon (but not at a higher rate than is authorized by the charter of the party of the first part thereto); and, further, that said party of the second part shall have full, free, and exclusive right to charge and collect all of the tolls on and freight charges and dues to accrue from said road during the said term, and to appropriate the same in the way and manner hereinafter mentioned, and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid and all other lawful powers and privileges which can or may be lawfully exercised and enjoyed on or about the said demised railway and

property as exclusively, fully, amply, and entirely as the same might or could have been used, exercised, and enjoyed by said party of the first part had this lease and contract not have been made, and as exclusively, fully, amply, and entirely as said party of the first part have authority by law to grant the same.

The party of the first part further covenants that it will keep up and maintain its legal and corporative organization, and, so far as it may be necessary to the full protection of the rights and interests of said second party, to permit the said party of the second part to use such corporative name and to act in and by virtue thereof; and in consideration of the premises the party of the second part hereby covenants to and with said party of the first as follows, viz:

First. That the party of the second part shall and will, at all times during the hereby demised term, work, use, manage,
25 maintain, operate, and keep in public use the railway of the party of the first part, with its appurtenances, from its point of connection with the railway of the party of the second part at or near Dresden, Muskingum county, Ohio, to its termination at Morrow, Warren county, Ohio, as aforesaid, and will so work and efficiently operate said railway and appurtenances between the said points, with all such locomotives, cars, and rolling stock owned and to be owned, controlled, or used by them, the party of the second part, as shall in the judgment of the party of the second part reasonably be required for and properly adapted to promptly and fully accommodate the business thereof, and shall and will collect and receive all of the said tolls, freight charges, and dues which shall accrue as aforesaid and apply and appropriate the same in the way and manner following, to wit:

1st. To the payment of the annual cost of repairing, maintaining, and perpetuating for public use the railway and property and all the expenses of working, using, managing, maintaining, and operating and running the same, including eight per centum per annum upon the cost of such engines as the party of the second part at its own expense may put on said road and the usual charge for car service for cars actually used and employed thereon and not owned by said first party, premiums for insurance, and all tolls, taxes, or assessments now or hereafter to be levied or assessed by the laws of the United States or the State of Ohio upon the traffic passing over said road and the property of the said party of the first part now or hereafter acquired by the party of the second part by and under this lease—

It being distinctly understood that certain work yet to be done and required to perfect and completely finish the said road hereby demised, as well as such additions and improvements thereto as the parties of the second part shall determine to be necessary from time to time for the prompt and economical movement of the traffic on and over said road, shall be done by and at the expense of the said first party.

2d. To pay the surplus, if any thereafter remains, to the
26 treasurer of the party of the first part: Provided, however, that in the event of the net earnings of the line of road hereby de-

mised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance over the net earnings in open account to be returned out of the subsequent earnings, and not otherwise.

Second. That said party of the second part shall and will at all times keep the buildings upon the lands hereby demised insured against loss by fire, paying the premiums therefor as aforesaid, and will keep said demised railway and property in good order and repair, and will, at the expiration of the hereby demised term or other sooner determination of this lease and contract, yield and deliver up the hereby demised railway and property and appurtenances in the same good order and repair that the same are now in or may be put in during the hereby demised term, reasonable wear and tear excepted.

Third. That the party of the second part shall keep accurate accounts of all the business receipts and revenues arising from the said demised property, and their books relating thereto shall be subject to the examination of the president of the party of the first part or any agent duly authorized by them to examine the same, and any stockholder of said first party shall have the right during the operation of this lease to examine the books of the party of the second part to ascertain whether the conditions of this lease and contract are being fairly complied with under the terms thereof; and the party of the second part shall furnish to the party of the first part monthly accounts of all the gross receipts and a semi-annual account of all the said business receipts, revenues, and expenses; and the said president or duly authorized agent of the party of the first part shall have the right at all times to travel without charge on the cars of the said party of the second part over the said demised railway for the purpose of ascertaining the business and the management of the said railway and reporting thereon to the party of the first part.

27 Fourth. That if any difference shall arise in relation to this lease and contract between the parties hereto each shall select a referee of experience and skill in railway management, and the said referees shall select another of like experience and skill, and the three so chosen shall hear and decide such differences, and their decision or that of a majority of them shall be final and conclusive upon the parties hereto.

Fifth. If the net earnings of said road, after the payment of the interest on the bonded debt of the company and other preferred charges and claims, is not sufficient to defray the expenses of maintaining the legal and corporate organization of the company the second party will advance the same from time to time as required to do so, charging such advance against the future net earnings of the company, provided that such advances for any one year shall not exceed the sum of two thousand dollars.

In witness whereof the said parties to these presents have caused

their respective common or corporate seals to be hereunto affixed, attested by their respective presidents and secretaries.

Dated the day and year first hereinbefore written.

[SEAL.] H. J. JEWETT,
President Cincinnati & Muskingum Valley Railway Co.

Attest: J. A. LIPPINCOTT,
Secretary C. & M. V. R'y Co.

Signed, sealed, and delivered in presence of—
R. T. HOWARD,
GEORGE DRIGGS.

[SEAL.] WILLIAM THAW,
Vice-President Pittsburgh, Cincinnati & St. Louis Railway Co.

Attest: W. H. BARNES,
Secretary P., C. & St. L. R'y Co.

STATE OF OHIO, *Franklin County,* } *ss:*

Be it remembered that on the 25th day of March, A. D. 1873, before me, the subscriber, a notary public of the State of Ohio
28 in and for said county, personally appeared H. J. Jewett, president, and J. A. Lippincott, secretary, of the Cincinnati and Muskingum Valley Railway Company aforesaid, and acknowledged the signing and ensealing of the foregoing lease and contract to be their voluntary official act and deed and the voluntary act and deed of said company.

In witness whereof I have hereunto set my official hand and seal the day and year above written.

[SEAL.] GEORGE DRIGGS,
Notary Public.

And afterwards, to wit, on the 9th day of Sept., A. D. 1885, the following cost bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Cost Bond.

29 In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS Railway Co., The Cincinnati, Muskingum Valley Railway Co., & Others. } No. —. Cost Bond.

I hereby acknowledge myself security for costs in this case.

W. B. SMITH. [SEAL.]

[Endorsed:] No. —. U. S. — court, S. D. O., — division. —— ——, plaintiff, *vs.* —— ——, defendant. Cost bond. Filed —— —, 188–. —— ——, clerk. —— ——, plaintiff's attorney.

29½ And afterwards, to wit, on the 7th day of Sept., A. D. 1885, there was filed in the clerk's office of said court the following præcipe, clothed in the words and figures following, to wit:

Præcipe.

Circuit Court of the United States, S. D. O., Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RW. CO. *et al.* } Præcipe.

Issue subpœna in the above-entitled cause, returnable according to law.

HOADLY, JOHNSON & COLSTON,
Solicitors & Counsel for Complainant.

And afterwards, to wit, on the 9th day of Sept., A. D. 1885, there was issued out of the clerk's office of said court, directed to the marshal of the said district, our certain subpœnas in chancery. Said subpœna is clothed in the words and figures following, to wit:

Subpœna in Chancery No. 1, No. 2, and No. 3.

30 Subpœna No. 1.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } *ss:*

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon The Trustees of Cadiz Township, Harrison County, Ohio, and The Trustees of Rumley Township, Harrison County, O., impleaded with others, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio aforesaid, at Columbus, on the first Monday in November next, to answer a certain bill in chancery filed and exhibited in said court against them by Charles Moran, citizen of and resident in the State of New York. Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this ninth day of Sept., A. D. 1885, and in the 110th year of the Independence of the United States of America.

[SEAL.]

Attest: B. R. COWEN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of Oct., 1885; otherwise the said bill may be taken *pro confesso*.

B. R. COWEN, *Clerk*.

[Endorsed:] United States circuit court, southern district of Ohio. No. —. —— —— *vs.* —— ——. Subpœna in chancery. Appearance day, first Monday in ——, 188–; answer day, first Monday in ——, 188–. —— ——, complainant's solicitor.

—— —— acknowledge- — security for all costs for which the plaintiff may be liable in this suit.

31 Endorsed thereon: W. B. Smith acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

32 *Subpœn- No.* 2.

UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, Eastern Division, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon The Trustees of German T'p, Harrison County, Ohio; The Trustees of Steubenville Township, Jefferson County, Ohio, and The City of Steubenville, impleaded with others, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio aforesaid, at Columbus, on the first Monday in November next, to answer a certain bill in chancery filed and exhibited in said court against them by Charles Moran, citizen of and resident in the State of New York. Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

[SEAL.] Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this ninth day of Sept., A. D. 188–, and in the 110th year of the Independence of the United States of America.

Attest: B. R. COWEN, *Clerk*.

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of Oct., 1885; otherwise the said bill may be taken *pro confesso*.

B. R. COWEN, *Clerk*.

[Endorsed:] United States circuit court, southern district of Ohio. No. —. —— —— *vs.* —— ——. Subpœna in chancery. Appearance day, first Monday in ——, 188–; answer day, first Monday in ——, 188–. —— ——, complainant's solicitor.

—— —— acknowledge- — security for all costs for which the plaintiff may be liable in this suit.

33 Endorsed thereon: W. B. Smith acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

34 *Subpœna No.* 3.

UNITED STATES OF AMERICA, *Southern District of Ohio, Eastern Division,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon The Pittsburgh, Cincinnati & St. Louis Railway Company, The Cincinnati and Muskingum Valley Railway Co., & Samuel Jeans, impleaded with others, citizen of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio aforesaid, at Columbus, on the first Monday in November next, to answer a certain bill in chancery filed and exhibited in said court against them by Charles Moran, citizen of and resident in the State of New York. Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice [SEAL.] of the United States, this ninth day of Sept., A. D. 188–, and in the 110th year of the Independence of the United States of America.

Attest: B. R. COWEN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of Oct, 1885; otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

[Endorsed:] United States circuit court, southern district of Ohio. No. —. —— —— *vs.* —— ——. Subpœna in chancery. Appearance day, first Monday in ——, 188–; answer day, first Monday in ——, 188–. —— ——, complainant's solicitor.

—— —— acknowledge- — security for all costs for which the plaintiff may be liable in this suit.

35 Endorsed thereon: W. B. Smith acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

And afterwards, to wit, on the 21st day of Sept., A. D. 1885, came the marshal of the district to whom the above subpœnas (No. 1, No. 2, and No. 3) were directed, and returned the same into the clerk's office of said court, with his proceedings endorsed thereon in words and figures following, to wit:

Marshal's Return- No-. 1, 2, and 3.

36 No. 1.

1885, SEPTEMBER 10TH.

Received this writ at Columbus, Ohio, and served the within-named The Trustees of Cadiz Township, Harrison County, Ohio, by delivering to P. Lynch, James N. Haverfield, and D. L. Hughes, trustees of said township, each personally a true copy of this writ, with all the endorsements thereon, on the 11th day of September, 1885, and on the 12th day of September, 1885, I served the within-named The Trustees of Rumley Township, Harrison County, O., by delivering to Isaac Stewart and W. E. Sawvel, trustees of said township, each personally a true copy of this writ, with all the endorsements thereon, and on the same day I served C. W. Birney, a trustee of said township, with a true copy of this writ, with all the endorsements thereon, left at his usual place of residence with an adult member of his family.

H. C. URNER,
U. S. Marshal,
By ROBERT BELL, *Deputy.*

6 services	12 00
6 copies	3 00
235 miles	14 10
	29 10

37 No. 2.

COLUMBUS, OHIO, *September 10th*, 1885.

Received this writ, and on the 12th day of September, 1885, I served the within-named The Trustees of German Township, Harrison County, Ohio, by delivering to S. J. Mack, J. W. Slater, and George Beckley, the trustees thereof, each personally a true copy of this writ, with all the endorsements thereon, and served on the 11th day of September, 1885, the within-named The Trustees of Steubenville Township, Jefferson County, Ohio, by delivering to Eli Smith and James McFarland, two of the trustees thereof, each personally a true copy of this writ, with all endorsements thereon, and on the same day by leaving a true copy of this writ, with all endorsements thereon, at the residence of Mathew S. Priest, the other trustee of said township, with an adult member of his family, and on the same day I served the within-named The City of Steubenville, by delivering to Henry Opperman, the mayor of said city, personally a true copy of this writ, with all endorsements thereon.

H. C. URNER,
U. S. Marshall, S. D. O.,
By ROBERT BELL, *Deputy.*

7 services	14 00
7 copies	3 50
170 miles (6)	10 20
	27 70

38 No. 3.

Received this writ at Columbus, Ohio, September 10th, 1885, and on the same day I served the within-named The Cincinnati and Muskingum Valley Railway Company by delivering to W. T. Black, the secretary and treasurer of said company, a true copy of this writ, with all the endorsements thereon, personally, no chief officer of said company being found within my district, and on the 14th day of September, 1885, I served the within-named The Pittsburgh, Cincinnati and St. Louis Railway Company by delivering to James McCrea, the manager of said company, at Columbus, Ohio, personally a true copy of this writ, with all the endorsements thereon, no chief officer of said company being found within my district. The within-named Samuel Jeans was not found within my district.

H. C. URNER,
U. S. Marshal, S. D. O.,
By ROBERT BELL, *Deputy.*

2 services	4 00
3 copies	1 50
73 miles (6)	4 38
	9 88

39 And afterwards, to wit, on the 30th day of Sept., A. D. 1885, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appearance of P., C. and St. L. R'y Co.

SOUTHERN DISTRICT OF OHIO:

United States Circuit Court.

CHARLES MORAN
vs.
THE P., C. AND ST. L. R'Y CO. *et al.* } No. 210.

To B. R. Cowen, clerk of said court:

Please enter our appearance in this case as counsel for P., C. and St. L. R'y Co.

J. T. BROOKS &
C. N. OLDS,
Att'ys for —— ——.

And afterwards, to wit, on the 5th day of Oct., A. D. 1885, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appearance of J. M. Estep.

40 J. M. Estep. W. G. Estep.

Office of Estep & Estep, attorneys-at-law.

"Notary public in the office."

CADIZ, O., *Oct.* 3, '85.

In the Circuit Court of the United States, Sixth Judicial Circuit, Southern District of Ohio, Eastern Division. In Equity.

CHARLES MORAN
vs.
P., C. AND ST. L. R'Y CO. *et al.*

I appear as solicitor for Samuel Jeans, trustee Cadiz township, and all defendants except the *the* two railway companies. Will you please so enter it?

J. M. ESTEP, *Att'y.*

To B. R. Cowen, clerk.

I will be out some day next week to see to the matter and will plead in due time.

J. M. E.

41 And afterwards, to wit, on the 14th day of October, A. D. 1885, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of Geo. Hoadley.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

CHARLES MORAN, Complainant,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO., The Cincinnati and Muskingum Valley Railway Company, Samuel Jeans, *et al.*, Respondents.

STATE OF OHIO, *Hamilton County*, } *ss:*

George Hoadly, being duly sworn, makes oath and says that he is informed and believes that Samuel Jeams, one of the respondents herein, is not an inhabitant of said district and is a resident of the city of Philadelphia and State of Pennsylvania, and that he be-
42 lieves that it will not be possible to serve Samuel Jeans with process herein within this district, and that said Jeans will not voluntarily appear herein.

GEO. HOADLY.

Sworn to before me and subscribed in my presence this 10th day of October, A. D. 1885.

[SEAL.] JOHN FLACK WINSLOW,
Notary Public in and for Hamilton County.

And on the 14th day of October, A. D. 1885, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

A, 431.

Upon motion of the complainant, and it appearing to the court that this suit is brought to enforce a mortgage upon the line of railway of the Cincinnati & Muskingum Valley Railway Company, and that said line of railway is situated within this district, and that Samuel Jeans, one of the defendants herein, cannot be found within this district, and will not voluntarily appear in this suit—

It is therefore ordered that the said Samuel Jeans do enter his appearance herein and plead, answer, or demur to the bill of
43 complaint of Charles Moran herein filed on or before the first rule day of this court after the service upon him personally or at his residence of a copy of the bill and exhibits filed in this cause and of this order.

It is also ordered that such service shall be proved to the satisfaction of this court by affidavit filed herein.

And afterward, to wit, on the 21st day of Oct., A. D. 1885, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

A, 444.

The complainant above named having produced to the court the affidavit of Geo. B. Myers in proof of service of the order heretofore made herein authorizing such service, and of the bill of complaint herein filed upon Samuel Jeans, one of the defendants herein, and the said service being proved to the satisfaction of the court by the said affidavit, the said service is hereby approved and confirmed.

44 And afterwards, to wit, on the same day, to wit (Oct. 21, 1885), the following proof of service, with printer's affidavit thereto attached, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Service by Publication, with Printer's Affidavit Attached.

Circuit Court of the United States, Sixth Circuit, Southern Dist. of Ohio, Eastern Division.

CHARLES MORAN, Complainant,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS Railway Co., The Cincinnati and Muskingum Valley Railway Co., Samuel Jeans, *et al.*, Respondents.
} No. 210. In Equity.

STATE OF PENN., *City & County of Phila.*, } *sct:*

On this 17th day of October, A. D. 1885, before me, the subscriber, a notary public for the State of Pennsylvania, resident in
45 Philadelphia, duly appointed by the Governor of the State of Pennsylvania, personally appeared George B. Myers, of said city, to me personally known, who, being duly sworn by me, deposes and says that on Friday, Oct. 16, 1885, he made personal service upon Samuel Jeans, one of the respondents in the above-entitled cause (Charles Moran *vs.* The Pittsburgh — Cincinnati Railway Co., Sam'l Jeans, *et al.*, U. S. circuit court, southern district of Ohio, eastern division, No. 210, in equity), at his residence, No. 1023 Arch street, Philadelphia, of the bill of complaint in said cause, and the order of court therein of Oct. 14th, 1885, directing him to appear and plead, answer, or demur to said bill of complaint on or before the first Wednesday after service upon him by giving to him a copy of said bill of complaint and exhibits filed in said cause and a duly certified copy of said order of court therein.

Said Sam'l Jeans admitted that he was the person named in said bill of complaint as a respondent, and he carefully examined said bill of complaint and order of court, and that he would notify
46 his attorney in Ohio and send the papers to him.

GEORGE DE B. MYERS.

Sworn to and subscribed before me this 17th day of Oct., A. D. 1885.

STANISLAUS RENACK,
Notary Public.

[SEAL.]

Printer's Affidavit.

(Affidavit.)

STATE OF PENNSYLVANIA, *County of Philadelphia*, } *ss:*

I, William B. Mann, prothonotary of the courts of common pleas of said county, the same being a court of record, do certify that Stanislaus Renack, Esquire, before whom the annexed affidavit was made, was at the time of so doing a notary public for the Common-

wealth of Pennsylvania, residing in the county of *Pennsylvania*, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgements, &c., and to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that I am well acquainted with the handwriting of the said notary public and verily believe his
47 signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 17th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

WILLIAM B. MANN,
[SEAL.] *Prothonotary.*

And afterwards, to wit, on the 31st day of Oct., A. D. 1885, the following answer was filed in the clerk's office of said court, clothed in words and figures following, to wit:

Answer of P., C. and St. L. R'y Co.

48 Circuit Court of the United States, Southern District of Ohio, Eastern Division.

CHARLES MORAN, Complainant,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and Samuel Jeans *et al.*, Respondents. } In Equity.

The separate answer of The Pittsburgh, Cincinnati and St. Louis Railway Company, one of the respondents, to the bill of complaint.

And now comes the Pittsburgh, Cincinnati and St. Louis Railway Company, and, first reserving to itself all benefit of exception that may be taken to any errors, uncertainties, and imperfections in the said bill contained, for answer thereto or so much thereof as it is advised it is material or necessary for it to answer, says:

It admits that the said complainant is a citizen and resident of the State of New York, and that this respondent is a corporation organized under the laws of the State of Ohio and having its principal office within the said district and division, and that the said Cincinnati and Muskingum Valley Railway Company is a corporation organized under the laws of the State of Ohio and having its principal office within the said district and division.

49 It admits the execution of the said mortgage in the said bill mentioned under date of Sept. 1, 1870; that it was accepted and recorded, and that it was given for the purpose and upon the terms and conditions substantially as therein stated; and it also admits the issuing of bonds, as therein provided for, to the extent of one and one-half millions of dollars; but as to the ownership

of said bonds, as alleged in said bill, it has no knowledge except from the statements therein contained, and it cannot therefore admit but denies the same, and requires full proof thereof, nor can it admit that the Pennsylvania Company is the holder of stock in this respondent company or in the Cincinnati and Muskingum Valley Company in the manner or to the extent alleged in said bill, but leaves the complainant to such proof thereof as he can make.

It admits the execution of the lease by the Cincinnati and Muskingum Valley Railway Company to this respondent company in Dec., 1872, a copy of which is annexed to said bill and marked "Exhibit C," and that this respondent company took possession thereof until the present time. It also admits that when said lease was submitted to the stockholders of this respondent company for approval the said Samuel Jeans, named as one of the respondnts herein, voted against the same.

But it denies that all the provisions of said lease have been fully kept and none of the same have been violated by the said lessor, The Cincinnati and Muskingum Valley Railway Company. On the contrary thereof, it avers and charges the fact to be that while it was provided by said lease that the lessor company should
50 pay for all additions and betterments that might become necessary to secure the prompt and economical movement of the traffic over the said leased railway, the said lessor company is and has been insolvent ever since the date of said lease, and this respondent company has been compelled to advance the sum of about $140,000 to provide such necessary additions and betterments, no part of which has the lessor company refunded, nor is it able to refund any portion thereof, being wholly without resources.

It denies that the said lease and contract constitutes a valuable muniment of title as part of the assets and property mortgaged to said complainant, or that it was accepted by him and by all the holders of said mortgage bonds and ratified and adopted by them as such muniment of titles, and it avers that they had no interest in said lease and have done nothing in relation thereto, except to receive interest upon their bonds, the money for which has been furnished from time to time by this respondent company, as the same became necessary to be done in consequence of the earnings of the said leased railway not being sufficient to pay the same.

It denies that said interest has been paid by this respondent company to said complainant and said bondholders, but says it has advanced money for the same to said lessor company by check remitted to the treasurer of said company, and the said treasurer has been in the habit, as this respondent company is informed and believes, of remitting the same to Moran Bros., who, as it is informed and believes, have been and are the fiscal agents of said lessor company in the city of New York.

It denies that this respondent company, in the year 1877
51 or at any other time, undertook, through the agency of the Pennsylvania Company, to cancel and rescind the said lease, but avers that whatever was done in that regard was an independent action taken by the officers and stockholders of the said lessor com-

pany. It admits, however, that it has felt the burden of the said lease for the reason that, contrary to its expectations and the terms of said lease, it has been required to expend a large sum of money, to wit, $140,000, in furnishing additions and betterments to said railway which were to have been furnished by said lessor company. It has likewise been compelled to pay a large sum of money to make up the deficit in the ordinary expenses of operating and maintaining the said railway in order that the same might be safely operated, when by the terms of said lease it was not required to make such payments. And it has been compelled, contrary to expectations, to advance a large sum of money, amounting since the date of said lease to about $800,000, to protect the interest on the bonds of the said lessor company.

In answer to the averments in said bill in regard to the bringing of the suit in the court of common pleas of Jefferson county, Ohio, on the 29th day of June, 1885, by Samuel Jeans and others, in regard to the suit itself this respondent denies in the most unqualified terms that it had any connection or agency whatever in the bringing of said suit or in procuring the same to be brought, and it denies in the same unqualified terms each and every allegation of said bill of complainant charging collusion or fraud upon this respondent company, either directly or indirectly in relation thereto. On the contrary, it avers that the president of this respondent company in the latter part of May, 1885, received a letter written by a
52 responsible attorney-at-law in Cadiz, Ohio, who claimed to represent nearly all the parties who are named as plaintiffs in said suits in Jefferson county, requesting the officers and directors of this respondent company to take steps to cancel the said lease referred to. The president replied to said application, saying in substance that what had been done — in good faith, and that the present management declined to take any steps toward obtaining cancellation of the same. The said president reported his said reply and action to the directors of said company at a meeting of the same held not long afterwards, and said directors unanimously approved and entered upon their journal their approval of his action in declining to inaugurate proceedings or aid the same to procure a cancellation of said lease.

This respondent company denies that the said complainant is the holder and owner in equity of the said lease, either as a muniment of title or otherwise, or that he has any right to enforce the same, either in his own behalf or in behalf of himself and others, as averred, in said bill of complainant.

Wherefore this respondent prays to be hence dismissed with its reasonable costs.

J. T. BROOKS AND
C. N. OLDS, *Solicitors.*

THE STATE OF OHIO, *Franklin County,* } ss:

C. N. Olds, being duly sworn, says that he is one of the solicitors of the above-named respondent, duly authorized in that regard, and

that he believes the statements contained in the foregoing answer to be true.

C. N. OLDS.

53 Sworn to by C. N. Olds before me and signed by him in my presence this 31st day of Oct., A. D. 1885.

EUGENE LANE,

[SEAL.] *Notary Public in and for Franklin Co., Ohio.*

54 And afterwards, to wit, on the 27th day of Nov., A. D. 1885, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

The Separate Answer of Samuel Jeans.

55 Circuit Court of the United States, Sixth Circuit, Southern District of Ohio, Eastern Division.

The joint and several and separate answers of Samuel Jeans, The Trustees of Cadiz Township, Harrison County, Ohio; The Trustees of Rumley Township, Harrison County, Ohio; The Trustees of German Township, Harrison County, Ohio; The Trustees of Steubenville Township, Jefferson County, Ohio, and The City of Steubenville to the bill of complaint of Charles Moran, complainant.

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for their joint and several and separate answers thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say—

That the complainant is a citizen and resident of the State of New York, but they deny that the Pittsburgh, Cincinnati and St. Louis Railway Company is a corporation organized under the laws of the State of Ohio or has its principal office within the
56 southern district of Ohio. On the contrary, the truth is that said company is a corporation duly incorporated under the laws of the State of Ohio, the State of West Virginia, and the State of Pennsylvania and has its principal office in the city of Pittsburgh, State of Pennsylvania. These respondents admit that Samuel Jeans is a citizen and resident of the State of Pennsylvania, and that the other of these respondents are townships and municipal corporations respectively organized under the laws of the State of Ohio.

These respondents admit the execution of the deed of mortgage, of which a copy is attached to said bill, marked Exhibit A, and that the same was recorded as in said bill alleged, and that the trustees therein named accepted the trust therein created, and that the bonds and coupons in said bill and mortgage described were made and issued as in said bill alleged, and that one of said trustees, J. Edgar Thompson, departed this life at the time stated in said bill.

They further admit that of said bonds outstanding the complain-

ant is the holder in his own right of more than four hundred, and that other persons and corporations, including the Pennsylvania Company, which Pennsylvania Company is the holder of more than three-quarters of the stock of the Pittsburgh, Cincinnati
57 and St. Louis Railway Company, are the holders and owners of the residue of said bonds, said Pennsylvania Company being the holder and owner of a majority, namely, seven hundred and fifty-two, of said bonds, and of eight-thirteenths of the stock of the Cincinnati and Muskingum Valley Railway Company.

These respondents admit that the indenture of lease in said bill mentioned, and of which a copy is attached thereto, marked Exhibit "C," was executed in December, 1872; but they deny that the same was entered into in pursuance of lawful authority conferred upon said corporations by the stockholders thereof.

These respondents admit that at the meeting of stockholders of the Pittsburgh Cincinnati and St. Louis Railway Company wherein said lease was submitted for approval and ratification by the stockholders of that company the said Samuel Jeans, defendant, being then, as now, a stockholder of that company, voted against approving or ratifying said lease.

These respondents admit that said Pittsburgh, Cincinnati and St. Louis Railway Company took possession of the property described in said lease soon after the date of said lease, and from that time has continued to manage and operate and has possessed itself
58 of the tolls, fares, and freight derived from the said railway property, and has in all respects been in the benefic-al use and enjoyment of the said railway property, rights, privileges, and franchises, subject to the provisions of said lease and contract, and also subject to the mortgage aforesaid.

These respondents deny that from the date of said lease down to and including the 30th day of June, 1885, all the provisions of said lease have been fully kept. They also deny that none of them have been violated. On the contrary, these respondents aver the truth to be that it was expressly provided in said lease, as is alleged in said bill, that the lessor company should, at its own expense, perfect and completely finish said road, and should also pay for all additions and betterments that might become necessary to secure the prompt and economical movement of the traffic on and over said leased railway; that the said lessor company is and has been insolvent since the date of said lease; but the said lessor company wholly failed to perform said provisions, and, by reason thereof, said lessee company has been compelled, in order to operate said road with safety, to expend for said purposes, to the 31st day of December, 1884, the large sum of one hundred and forty thousand dollars ($140,000)
59 and over, no part of which the lessor company has refunded, nor is it able to refund any portion of the same.

And by the terms of said lease said lessee company is not bound to advance any moneys to defray operating expenses; yet in order to operate said road with safety it has been forced to advance and has actually advanced large sums for that purpose, no part of which

has been or can be refunded. All of the above-mentioned advances and payments are a complete loss to said lessee company.

These defendants, further answering, say that they are informed that it is not true that the said lessee company has advanced to the said bondholders the interest upon said bonds. These respondents therefore deny the allegations in said bill on that subject. They are informed and aver the truth to be that the said lessee company has advanced money to said lessor company to pay said interest on said bonds; that the "course of business" has not been as alleged in said bill; that it is not true that each six months, in anticipation of the maturity of said coupons, the treasurer of said The Pittsburgh, Cincinnati and St. Louis Railway Company has furnished or advanced to the complainant the interest upon all said bonds except those held by the Pennsylvania Company. On the contrary,
60 these defendants are informed and aver the truth to be that the advan-es made by said lessee company to pay interest on said bonds have been upon bills in favor of said lessor company.

These respondents, further answering, deny that the said lease and the performance thereof or the said lease or the performance thereof have been accepted by said complainant or by all or any or either of the holders of the said first-mortgage bonds as an additional and further muniment of title or have been ratified or adopted by the complainant or any or either of the holders of said mortgage bonds; and these respondents deny that the said lease and contract constitute a valuable or any muniment of title as part of the estate and property mortgaged to the complainant. On the contrary, these respondents aver the truth to be that neither the complainant nor the holders of the said mortgage bonds nor any or either of such holders ever in any manner or for any purpose accepted, ratified, or adopted said lease or the performance thereof, and that said lease and contract do not constitute a muniment of title as part of the estate or property mortgaged to the complainant, and that neither the complainant nor the holders of said mortgage bonds nor any or either of such holders have any interest in or right or title to said lease.

61 And these respondents deny that said complainant, for the benefit of the bondholders aforesaid or otherwise, is the holder or owner, in equity or otherwise, of said lease as security for the payment of said mortgage bonds, and they deny that he is entitled to enforce the provisions thereof.

These respondents deny that the said holders of said coupons have received the interest which has been paid on said bonds with full knowledge that the same was derived from the operations of the execution of said lease and not from the earnings of said mortgagor company outside of said lease.

These respondents further deny that faith and credit have been, by the means alleged in the bill, given to the said mortgage bonds, or that they have been held or have obtained circulation and passed from hand to hand by sales and pledges in confidence of the trust

reposed in said lease and contract and in the execution thereof by said lessee company.

These respondents do not know whether or not in the year 1877 said Pittsburgh, Cincinnati and St. Louis Railway Company, through the agency of the Pennsylvania Company, owning the majority of said bonds and the majority of the stock in the Cincinnati
62 and Muskingum Valley Railway Company, undertook to cancel and rescind said lease, or whether, being sued by said complainant for its enforcement, said first-named company desisted from said attempt.

These respondents are informed that said allegations are not true. They therefore insist upon full proof of the truth of allegations in said bill upon that subject.

Nor do these respondents know whether or not ever since said date and until now the said Pittsburgh, Cincinnati and St. Louis Railway Company and the said Pennsylvania Company, its principal stockholder, have been desirous of avoiding advancing to said Muskingum Valley Railway Company the means to pay the coupons of said mortgage bonds at maturity. These respondents therefore insist upon full proof of the truth of allegations in said bill upon that subject.

These respondents, further answering, say that they did, on the 29th day of June, 1885, bring the suit mentioned in said bill in the court of common pleas of Jefferson county, Ohio, against the said The Pittsburgh, Cincinnati and St. Louis Railway Company and the Cincinnati and Muskingum Valley Railway Company, and that said suit is now pending in said court of common pleas; but these
63 respondents deny that the said The Pittsburgh, Cincinnati and St. Louis Railway Company and the said Pennsylvania Company or either of them procured these respondents to bring said suit. On the contrary, these respondents brought said suit on their own motion and of their own accord, and in entire good faith, without the instigation or procurement of said companies or either of them; and these respondents say that the object and prayer of their said suit so brought by them was to obtain a temporary injunction restraining the said The Pittsburgh, Cincinnati and St. Louis Railway Company from using or advancing the funds of that company to pay $52,500, the interest on said bonds due July 1st, 1885, and to enjoin said Cincinnati and Muskingum Valley Railway Company from attempting to enforce said lease and contract until a final hearing in said suit, and upon such final hearing to have said lease and contract brought into said court wherein said suit was commenced and de-lared null and void and cancelled and all further operation thereunder by either party thereto enjoined, and especially to perpetually enjoin the said The Pittsburgh, Cincinnati and St. Louis Railway Company from using the funds
63½ of that company to make any further advances for interest on said bonds or for the operation and maintenance of said road of the Cincinnati and Muskingum Valley Railway Company or otherwise under said lease and contract, and for general relief; and these respondents say that they made application in said suit

for the allowance of a temporary injunction, and upon the hearing thereof said court of common pleas granted a temporary injunction restraining the payment of the interest on said mortgage bonds due on the 1st of July, 1885, and said temporary injunction still continues; but these respondents deny that said The Pittsburgh, Cincinnati and St. Louis Railway Company and said Pennsylvania Company or either of them, by collusion with said Jeans and others, plaintiffs, procured said temporary injunction. On the contrary, these respondents duly applied for and obtained the same on their own motion, of their own accord, and in good faith, without the instigation or procurement of said companies or either of them or any other person. These respondents hope and expect upon the final hearing of said cause to obtain a decree in said suit making said injunction perpetual; but the same will not be obtained nor
64 be sought to be obtained by collusion of said companies or either of them with these respondents. If such decree is rendered it will be rendered upon a showing to said court by these respondents in good faith and without collusion with any corporation or person.

These respondents deny that the said suit is a fraud upon the rights of the complainant and of the bondholders aforesaid or any or either of them. On the contrary, the said suit was begun and is and will be prosecuted in good faith to protect the rights and interests of these respondents as stockholders of said The Pittsburgh, Cincinnati and said St. Louis Railway Company.

These respondents admit that the Cincinnati and Muskingum Valley Railway Company is insolvent, and they said that it was insolvent when said bonds and mortgage were made and issued by it, and has been ever since then; but these respondents deny that the only method whereby the rights of said complainant can be secured to him is by the collection of said rents and the sale of said property, with the benefit of said lease and contract and the receipt of the annual rental for the term of said lease. On the contrary, these respondents aver and insist that the only rights of the complainant in the premises are to enforce said bond and mortgage accord-
65 ing to the terms and provisions thereof, and that he has no right to collect rents under said lease or to enforce the collection of such rents thereunder.

The said petition in said action in said court of common pleas contains and sets forth the facts and allegations following, namely:

"That these defendants are now and have been for over twenty years the owners and holders of 6,870 shares of the capital stock of the said Pittsburgh, Cincinnati and St. Louis Railway Company (the shares being $50 each) of the par value of three hundred and forty-three thousand five hundred dollars ($343,500). A statement of the number of shares held by each is hereto attached and marked Exhibit 'A.'

"That in the year 1872 the Pittsburgh, Cincinnati and St. Louis Railway Company was doing a prosperous business, and had, after paying all operating expenses, a large surplus of net earnings yearly, and in that year negotiations were entered into by said company

and the Cincinnati and Muskingum Valley Railway Company looking to an arrangement by which the Pittsburgh, Cincinnati and St. Louis Railway Company would assume the control of and operate the railroad of the Cincinnati and Muskingum Valley Railway Company, but it was not then contemplated that the Pittsburgh,
66 Cincinnati and St. Louis Railway Company should pay or advance the interest on the first-mortgage bonds of the Cincinnati and Muskingum Valley Railway Company, as hereinafter stated. As a result of such negotiations in December, 1872, an agreement was entered into, in writing, between said companies for the operation and management of the said Cincinnati and Muskingum Valley railway. A copy of which agreement is attached to the plaintiffs' bill herein, marked 'C.'

"That by the terms of this agreement and lease it was to take effect January 1st, 1873; but in fact the Pittsburgh, Cincinnati and St. Louis Railway Company did not take possession and commence to operate said road until May 1st, 1873, since which date it has continued to operate said road under said agreement.

"That the said contract of lease in its terms and operations is a hard, oppressive, and unconscionable agreement and a fraud upon the rights of these respondents.

"It was a mere operating contract by which the lessee was to operate the road, collect and receive the earnings thereof, and after paying the expenses of operating and maintaining the same the lease provides in the second paragraph of the first clause thereof that the lessee shall 'pay the surplus, if any thereafter re-
67 mains, to the treasurer' of the lessor company. The lessee company could derive no profits from said lease or the earnings of said road in any event, as the entire net earnings were to be turned over to the lessor company.

"That the following paragraph of said second clause of said lease, requiring the lessee to advance the interest of the first-mortgage bonds of said lessor company, is wholly without consideration. The paragraph is as follows:

"'Provided, however, that in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance over the net earnings in open account, to be returned out of the subsequent earnings and not otherwise.'

"The fifth clause of said lease also provides that the lessee company shall advance the funds from time to time to defray the expenses of maintaining the legal and corporate organization of the lessor company in case the net earnings of said road, after paying interets on the bonded debt of said company and the other preferred charges, shall not be sufficient for that purpose, 'charging said advance against the future net earnings of said company.'

68 "This bonded indebtedness of the lessor company at the date of this lease was $1,500,000. The same debt had substantially existed against the road of the lessor company under different

for the allowance of a temporary injunction, and upon the hearing thereof said court of common pleas granted a temporary injunction restraining the payment of the interest on said mortgage bonds due on the 1st of July, 1885, and said temporary injunction still continues; but these respondents deny that said The Pittsburgh, Cincinnati and St. Louis Railway Company and said Pennsylvania Company or either of them, by collusion with said Jeans and others, plaintiffs, procured said temporary injunction. On the contrary, these respondents duly applied for and obtained the same on their own motion, of their own accord, and in good faith, without the instigation or procurement of said companies or either of them or any other person. These respondents hope and expect upon the final hearing of said cause to obtain a decree in said suit making said injunction perpetual; but the same will not be obtained nor
64 be sought to be obtained by collusion of said companies or either of them with these respondents. If such decree is rendered it will be rendered upon a showing to said court by these respondents in good faith and without collusion with any corporation or person.

These respondents deny that the said suit is a fraud upon the rights of the complainant and of the bondholders aforesaid or any or either of them. On the contrary, the said suit was begun and is and will be prosecuted in good faith to protect the rights and interests of these respondents as stockholders of said The Pittsburgh, Cincinnati and said St. Louis Railway Company.

These respondents admit that the Cincinnati and Muskingum Valley Railway Company is insolvent, and they said that it was insolvent when said bonds and mortgage were made and issued by it, and has been ever since then; but these respondents deny that the only method whereby the rights of said complainant can be secured to him is by the collection of said rents and the sale of said property, with the benefit of said lease and contract and the receipt of the annual rental for the term of said lease. On the contrary, these respondents aver and insist that the only rights of the complainant in the premises are to enforce said bond and mortgage accord-
65 ing to the terms and provisions thereof, and that he has no right to collect rents under said lease or to enforce the collection of such rents thereunder.

The said petition in said action in said court of common pleas contains and sets forth the facts and allegations following, namely:

"That these defendants are now and have been for over twenty years the owners and holders of 6,870 shares of the capital stock of the said Pittsburgh, Cincinnati and St. Louis Railway Company (the shares being $50 each) of the par value of three hundred and forty-three thousand five hundred dollars ($343,500). A statement of the number of shares held by each is hereto attached and marked Exhibit 'A.'

"That in the year 1872 the Pittsburgh, Cincinnati and St. Louis Railway Company was doing a prosperous business, and had, after paying all operating expenses, a large surplus of net earnings yearly, and in that year negotiations were entered into by said company

and the Cincinnati and Muskingum Valley Railway Company looking to an arrangement by which the Pittsburgh, Cincinnati and St. Louis Railway Company would assume the control of and operate the railroad of the Cincinnati and Muskingum Valley Railway Company, but it was not then contemplated that the Pittsburgh,
66 Cincinnati and St. Louis Railway Company should pay or advance the interest on the first-mortgage bonds of the Cincinnati and Muskingum Valley Railway Company, as hereinafter stated. As a result of such negotiations in December, 1872, an agreement was entered into, in writing, between said companies for the operation and management of the said Cincinnati and Muskingum Valley railway. A copy of which agreement is attached to the plaintiffs' bill herein, marked 'C.'

"That by the terms of this agreement and lease it was to take effect January 1st, 1873; but in fact the Pittsburgh, Cincinnati and St. Louis Railway Company did not take possession and commence to operate said road until May 1st, 1873, since which date it has continued to operate said road under said agreement.

"That the said contract of lease in its terms and operations is a hard, oppressive, and unconscionable agreement and a fraud upon the rights of these respondents.

"It was a mere operating contract by which the lessee was to operate the road, collect and receive the earnings thereof, and after paying the expenses of operating and maintaining the same the lease provides in the second paragraph of the first clause thereof that the lessee shall 'pay the surplus, if any thereafter re-
67 mains, to the treasurer' of the lessor company. The lessee company could derive no profits from said lease or the earnings of said road in any event, as the entire net earnings were to be turned over to the lessor company.

"That the following paragraph of said second clause of said lease, requiring the lessee to advance the interest of the first-mortgage bonds of said lessor company, is wholly without consideration. The paragraph is as follows:

"'Provided, however, that in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance over the net earnings in open account, to be returned out of the subsequent earnings and not otherwise.'

"The fifth clause of said lease also provides that the lessee company shall advance the funds from time to time to defray the expenses of maintaining the legal and corporate organization of the lessor company in case the net earnings of said road, after paying interets on the bonded debt of said company and the other preferred charges, shall not be sufficient for that purpose, 'charging said advance against the future net earnings of said company.'

68 "This bonded indebtedness of the lessor company at the date of this lease was $1,500,000. The same debt had substantially existed against the road of the lessor company under different

management for more than twenty years, and, as was well known, no company or management had ever been able to pay the interest thereon.

"The first company owning this property was styled 'The Wilmington and Zanesville Railroad Company,' chartered Feb. 4, 1851. It started with a mortgage debt of $1,300,000.00 seven per cent. bonds. No interest being paid, the mortgage was foreclosed in the Federal court at Cincinnati, Ohio, and the property, under the decree of the court, was sold in August, 1863, and the company was reorganized in March, 1864, as the 'Cincinnati and Gainesville Railroad Company.'

"This company also started out anew with a bonded indebtedness of $1,300,000, but no interest being paid thereon for several years the mortgage was foreclosed and the property finally sold and conveyed to a new organization about Sept. 1st, 1870, styled 'Cincinnati and Muskingum Valley Railway Company,' and the said bonded indebtedness was then increased to the said sum of fifteen hundred thousand dollars ($1,500,000), the extra $200,000 being added for the alleged purposes of extending the line of said road from
69 Zanesville to Dresden and there to connect with the road of the Pittsburgh, Cincinnati and St. Louis Railway Company.

"These first-mortgage bonds of the lessor company were and had been for years substantially worthless, as the interest could not be paid thereon and the lessor company was insolvent.

"The earnings of said road being entirely insufficient to pay the interest on these bonds, the lessee company has been required under said clause in said lease to advance and pay the interest on said bonds and to maintain the corporate organization of said lessor company very large sums every year but one since said lease was executed without any chance of reimbursement, to the great injury of the lessee company and these defendants.

"The lessee paid said interest and expenses for the year 1873 at a loss to the lessee of $92,194; for the year 1874 at a loss of $108,000.00, and for the year ending Dec. 31, 1884, at a loss of $147,000, total loss caused thereby to the lessee company up to Dec. 31, 1884, being the sum of nine hundred and fifty-three thousand five hundred and seventy dollars ($953,570), as a statement compiled from the published official reports of said companies and statements of
70 the directors of said companies furnished to the railroad commissioner of Ohio will show, which statement is hereto attached, marked Exhibit 'B.'

"That said lease by its terms required the lessor company at its own expense 'to perfect and completely finish the said road and to furnish such additions and improvements thereto as might be necessary for the prompt and economical movement of the traffic on and over said road,' but that said lessor company has totally failed to comply with its said agreement in that regard, and by reason thereof the lessee company has been forced, in order to operate its said road with any safety, to expend for the purpose aforesaid up to Dec. 31, 1884, the large sum of $140,000, no part of which has ever been refunded nor can be.

"By the terms of said lease the lessee company is not required to advance any funds for operating expenses, and yet, in order to operate said road safely, it has been compelled to and has advanced large sums for that purpose, no part of which has ever been reimbursed nor can be, and all of said advances and payments are a total loss to the lessee company.

"After a long and fair trial it is now manifest that the lessor company will never be able to comply with the terms of said lease,
71 and that the earnings of said leased road will never be sufficient to reimburse the lessee company for any part of these large outlays and advancements. Many of the years since the date of said lease have been good years for freight and travel, and by reason of the construction of several intersecting and parallel lines of railroad competing with the said Cincinnati and Muskingum Valley railway in business since said lease was executed, which have reduced its earnings and will continue to do so, it is demonstrated that there can be no further hope of a reimbursement for these large expenditures. The burden is constantly growing more onerous, and this constant drain upon the lessee's resources is destructive to the value of the stock of these defendants in the said lessee's road, and unless relief be granted it will be forever rendered utterly worthless.

"This agreement, therefore, if intended to be a fair transaction in the beginning, was entered into under a mutual mistake of important facts in consideration and upon the faith of promises, express and implied, which have not been realized nor complied with and which have not and cannot be performed on the part of the lessor company, and the consideration for the lessee's covenants has
72 entirely failed; and these defendants aver that it will be unjust and grossly inequitable to require or permit the lessee company to advance and waste any more of its own proper funds in paying the expenses and debts of the lessor company without any chance or hope of a return, to the prejudice and destruction of the rights of these defendants as stockholders in said lessee's company, and for the reasons aforesaid said agreement and lease should be rescinded and set aside.

"That the circumstances, influences, and means by which said agreement was brought about, executed, and accepted constitute a fraud upon the rights of these defendants and other minority stockholders in said lessee company and render said lease and agreement illegal and void.

"A large majority of the stock of both said lessor and lessee companies was owned by the Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, in its own name directly and in the name of the said Pennsylvania Company, as a corporation of the State of Pennsylvania, wholly in the interest of and controlled by the Pennsylvania Railroad Company.

"The total stock of the Pittsburgh, Cincinnati and St. Louis Railway Company at the date of said agreement and lease was
73 about $8,478,000, of which amount the Pennsylvania Railroad Company owned in its own name $3,000,000; the Penn-

sylvania Company owned $3,778,000. At the same time the Pennsylvania Company owned a majority, $\frac{3}{4}$ths, of the stock of the said Cincinnati and Muskingum Valley Railway Company, and the Pennsylvania Railroad Company owned $752,000, or a majority, in value, of the said $1,500,000 first-mortgage bonds of the said Cincinnati and Muskingum Valley Railway Company, and the said Pennsylvania Railroad Company still own and control the said stocks and bonds.

"That at the time said agreement and lease were executed the president of the Cincinnati and Muskingum Valley Railway Company was a director and general counsel of the Pittsburgh, Cincinnati and St. Louis Railway Company, and also the general counsel for the said Pennsylvania Company; that on June 10th, 1872, the directors of the Pittsburgh, Cincinnati and St. Louis Railway Company passed a resolution authorizing the president of said company to execute a lease of the Cincinnati and Muskingum Valley Railway Company to the said Pittsburgh, Cincinnati and St. Louis Railway Company on such terms and conditions as might be prepared by its said general counsel, who was also president of the said Cin-
74 cinnati and Muskingum Valley Railway company, as before stated.

"The directors of said lessor and said lessee companies were trustees for said companies and all their stockholders, and, occupying this fiduciary relation, they were not in a situation to make a binding or legal contract with each other touching the lease aforesaid without the consent of these defendants and other minority stockholders in interest with them, whose interests were solely in the well-being of their own railroad.

"The Pennsylvania Railroad Company and the Pennsylvania Company, majority stockholder in both the lessor and lessee companies, had thus large pecuniary interests directly adverse to the interests of these defendants and other minority stockholders in the Pittsburgh, Cincinnati and St. Louis Railway Company, elected and controlled the officers of both lessor and lessee companies, and by means of said control caused said lease to be executed; and these defendants aver that said contract and lease thus brought about is directly adverse and greatly prejudicial to the interests of these defendants and other minority stockholders in said lessee company, a fraud upon their rights, and is wholly illegal and void.

"This action of the directors, as officers of the lessor and
75 lessee companies, though formally confirmed by a vote of a majority of the stock owned and held by the Pennsylvania Railroad Company and the Pennsylvania Company as aforesaid, has never been assented to or approved in any way by these defendants or minority stockholders.

"And the said Samuel Jeans, one of these respondents, at the time said lease was submitted to the stockholders of the lessee company for approval, to wit, Dec. 30th, 1872, entered his written protest against the execution of the said lease on the part of the lessee company, and the same was placed on file with said company, and he has never ratified nor approved the same in any way, and he had no

knowledge of the adverse interests so controlling and causing said lease to be executed until about April 1st, 1885, and the other defendants herein had no knowledge or information of the circumstances under which said lease was executed or of the said adverse interests so controlling and causing said lease to be executed until April —, 1885. Immediately upon ascertaining the facts and circumstances aforesaid these defendants notified the president and board of directors of the Pittsburgh, Cincinnati and St. Louis Railway Company and requested and demanded of them to take action or proceedings to have said lease rescinded and set aside, but
76 said company and directors have distinctly and positively refused to take any action in that regard.

"These defendants thereupon notified the Pennsylvania Railroad Company of their complaint and requested and demanded that said company should exercise its powers as a majority stockholder in both lessor and lessee companies and have said lease rescinded and set aside or cause the same to be done, but said company has positively declined to take any action in the premises. Thereupon these defendants have taken action in their own behalf.

"That after a fair trial and it being demonstrated that the earnings and income of the said lessor's road are wholly insufficient to maintain and operate the said railroad and pay the interest on said bonded debt of said lessor company and wholly insufficient to ever repay or reimburse the lessee company for the said large outlays and advances heretofore made for that purpose or any part thereof it will be grossly inequitable and unjust to allow said lessee company to use the funds of said company to make any further advances under said lease, as by reason of the insolvency of the lessor company and the facts before stated such further payment will be a total loss and create and cause great and irreparable injury to these defendants."

77 All of which facts and allegations will appear fully and at large in the said petition of these respondents, filed in said action in said court of common pleas of Jefferson county. They further say that a decree was entered by the court of common pleas of Jefferson county, Ohio, at its October term, A. D. 1885, to wit, Nov. 24, 1885, in said case, vacating and setting aside said lease and declaring the same null and void, a true copy of which judgment and decree is herewith filed, marked Exhibit "D"; and these respondents now here state, in this their answer to said bill of complaint of said Moran, that each and every one of the foregoing facts and allegations so as aforesaid set forth and contained in the said petition of these respondents in said action in said court of common pleas are, according to the best of the knowledge and belief of these respondents, true, and they hereby make such facts and allegations a part of this answer and hereby set up said suit and decree, as well as said facts and allegations, by way of further defence to said bill of complaint.

These respondents, further answering, say they are informed that the interest due upon said mortgage bonds upon the first day of July, 1885, was not paid, and that by reason thereof the condition of

defeasance of said mortgage has been broken and the estate
78 of said mortgage in said premises under said mortgage has become absolute in law, subject only to be redeemed upon payment of said interest and of the further installments of interest as they may accrue upon said bonds secured by said mortgage; but these respondents deny that the rights of said mortgagor as lessor under said lease are included in the estate of said mortgagee in said premises. On the contrary, the said mortgagee has no interest whatever in said lease, and the estate of said mortgage- in said premises only includes such interest therein as the mortgagee acquired upon the execution of said mortgage, and irrespective of any rights which said mortgagor may have thereafter acquired under said lease.

And these defendants respectively deny all and all manner of unlawful combination, collusion, and confederacy wherewith they are respectively by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants respectively to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and will-
79 ing to aver, maintain, and prove as this honorable court shall direct.

J. M. ESTEP,
HARRISON, OLDS & MARSH,
Solicitors for Respondents.

EXHIBIT "A."

Number of Shares of Stock Held by Defendants Each in P., C. & St. L. R. R. Co.

Sam'l Jeans	2,570	Trustees German T'p	228
Trustees Cadiz T'p	1,269	" Steubenville T'p	1,275
" Rumley T'p	253	City of Steubenville	1,275

80 EXHIBIT "B."

Earnings and Expenses of said Road from Jan. 1, 1873, *to December* 31, 1884.

	Gross earnings.	Expenses.	Net earnings.	Int. on bonds.	Net loss or profit.
May 1 to Dec. 31, '73	443,216 68	430,410 68	12,806 00	105,000	92,194
Year 1874	429,828 74	433,128 85	Loss 3,600 11	105,000	108,600 11
1875	396,227 23	360,482 60	35,744 63	105,000	69,355 37
1876	322,359 10	329,743 43	Loss 7,384 33	105,000	112,384 33
1877	366,773 86	340,887 91	25,885 95	105,000	79,114 05
1878	340,396 72	318,086 70	22,310 02	105,000	82,689 98
1879	374,666 12	264,523 95	110,142 17	105,000	Profit 5,142 17
1880	364,703 54	319,881 67	44,821 87	105,000	60,178 13
1881	395,821 39	375,045 88	22,275 51	105,000	84,724 49
1882	386,740 39	299,876 08	86,864 31	105,000	18,135 69
1883	384,050 87	383,484 71	566 16	105,000	104,433 84
1884	385,667 08	425,669 32	Loss 42,002 24	105,000	147,002 24
	$4,587,951 72	$4,281,521 78	$306,429 94	$1,260,000 00	$953,570 06

81 THE STATE OF OHIO, } ss:
Harrison County, }

Patrick Lynch, D. L. Hughes, and James Haverfield, being duly sworn, do depose and say that they are "the trustees of Cadiz township," one of the defendants named in the foregoing answer; that they have read the same and know the contents thereof, and that the several matters and things set forth in said answer are, according to the best of their knowledge, information, and belief, true in substance and in fact.

P. LYNCH.
D. L. HUGHES.
JAS. P. HAVERFIELD.

Sworn to by the said Patrick Lynch, D. L. Hughes, and James Haverfield before me and signed by them in my presence this 26th day of November, A. D. 1885.

JAMES MOORE,
[SEAL.] *Notary Public.*

82 On the 27th day of Nov., A. D. 1885, the following Exhibit D (referred to in answer of Samuel Jeans) is herewith filed in the clerk's office of said court, clothed in the words & figures following, to wit:

EXHIBIT D. Referred to in Answer of Jeans.

83 SAMUEL JEANS *et al.*
vs.
THE P., C. & ST. L. RAILWAY CO. and THE CINCINNATI & MUSKINGUM VALLEY RAILWAY CO.

This cause came on to be heard upon the demurrer to the petition filed by the defendant The Cincinnati & Muskingum Valley Railway Company, and the court, on consideration thereof, overrules the same, to which said defendant excepts; and thereupon, the said defendant failing to plead further and the defendant The Pittsburgh, Cincinnati & St. Louis Railway Company having filed its answer herein, the cause came on to be further heard and was submitted to the court upon the pleadings and evidence, and the court, being fully advised in the premises, finds that the allegations of said petition are true, and that the plaintiffs are entitled to the equitable relief prayed for.

It is therefore adjudged and decreed by the court that said contract and lease (a copy of which is attached to the petition in this case) be, and the same is hereby, vacated, set aside, and declared null and void.

It is further adjudged and decreed that on or before January 1st, 1886, the said Pittsburgh, Cincinnati & St. Louis Railway
84 Company surrender and deliver up to the said Cincinnati & Muskingum Valley Railway Company its said demised rail-

way and property, including all the depots, stations, buildings, and appurtenances, locomotives, engines, cars, and equipment, and all other property belonging to the lessor company, the said property so to be restored to be delivered back in as good order and repair as when received by the lessee or as it was thereafter put in, reasonable wear and tear excepted, the equipment delivered back to be of equal value to that received.

It is further adjudged and decreed that the Pittsburgh, Cincinnati & St. Louis Railway Co. be perpetually enjoined and restrained from operating said leased road under said lease or using said leased road and property further than may be necessary to make a proper adjustment and delivery of said road and property to said lessor company within the time prescribed in this decree or from taking, using, or advancing any of the funds of said lessee company to the lessor company for the purpose of paying interest on the mortgage bonds of said lessor company or the debts of said company or for the operation and maintenance of said leased road except as hereinafter stated.

85 And the said lessor, The Cincinnati & Muskingum Valley Railway Co., is hereby perpetually enjoined from enforcing or attempting to enforce said lease and contract against said lessee.

But this decree is not to interfere with the liability of said lessee company for the debts and expenses incurred while so operating said road under said lease up to the time of the delivery thereof to the said lessor under this decree or to prevent the advance of its said funds to the treasurer of said Cincinnati & Muskingum Valley Railway Company of the $52,500 to protect the interest on the mortgage bonds of said latter company due July 1st, 1885, which advance, but no other or further advance in this regard, the lessee company is authorized and required to make, and the temporary injunction heretofore granted is modified to that extent accordingly.

It is further adjudged and decreed that the defendants pay the costs of this proceeding within thirty days, and in default thereof that execution issue therefor.

STATE OF OHIO, *Jefferson County,* } *ss:*

I, Ross White, clerk of the court of common pleas within and for said county, hereby certify the foregoing to be truly taken
86 and correctly copied from the journal of said court as the same remains in my office at Steubenville, Ohio.

Witness my signature and the seal of said court this 24th day of November, A. D. 1885.

[SEAL.] ROSS WHITE, *Clerk.*

87 And afterwards, to wit, on the 7th day of Dec., A. D. 1885, an entry was made upon the journal of said court, clothed in the words & figures following, to wit:

A, 462.

By consent of parties leave is granted to file the separate answer

of Samuel Jeans and others, defendants, which was placed on file Nov. 27, 1855, and by like consent leave is granted to plaintiff to file a replication to said answer by the next January rule day for pleading.

By leave of court first had and obtained on the 8th day of Dec., A. D. 1885, the following supplemental answer of the P., C. and St. L. R'y Co. was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Supplemental Answer of P., C. and St. L. R'y Co.

88 Circuit Court of the United States, Southern District of Ohio, Eastern Division.

CHARLES MORAN, Complainant,
against
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and Others, Defendants. } In Equity.

Supplemental answer of the Pittsburgh, Cincinnati and St. Louis Railway Company.

And now comes the Pittsburgh, Cincinnati and St. Louis Railway Company and, by leave of the court first obtained, files herein its supplemental answer to the bill of complainant, and says that since the filing of its original answer herein, on the 31st day of October, A. D. 1885, the court of common pleas of Jefferson county, Ohio, in the case of Samuel Jeans *et al. vs.* The Pittsburgh, Cincinnati and St. Louis Railway Company and others (referred to in said bill of complaint), did, on the 24th day of November, 1885, render a decree in said action vacating and setting aside the said lease from the said Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company and declaring the same to be null and void, and further adjudging and
89 decreeing that on or before the 1st of January, 1886, the said lessee company surrender and deliver up the said leased property to the said lessor company, and enjoining and restraining the said lessee company from the use of said property after the date last aforesaid or from taking, using, or advancing any of its funds for the operation and maintenance of said leased property or for the payment of interest on the bonds of said lessor company or in payment of the debts of said company. The said decree of said court so rendered and entered upon the records of said court still remains unreversed and in full force and effect, and this respondent now attaches a true copy of the same to this supplemental answer and files it herewith as a further defense to the said bill of complaint.

J. T. BROOKS AND
C. N. OLDS, *Solicitors.*

90 SAMUEL JEANS *et al.*
vs.
THE P., C. & ST. L. RAILWAY CO. and THE CINCINNATI & MUSKINGUM VALLEY RAILWAY CO.

This cause came on to be heard upon the demurrer to the petition filed by the defendant, The Cincinnati & Muskingum Valley Railway Company, and the court, on consideration thereof, overruled the same, to which said defendant excepts; and thereupon, the said defendant failing to plead further, and the defendant The Pittsburgh, Cincinnati & St. Louis Railway Company having filed its answer herein, the cause came on to be further heard, and was submit-ed to the court upon the pleadings and evidence, and the court, being fully advised in the premises, finds that the allegations of said petition are true, and that the plaintiffs are entitled to the equitable relief prayed for.

It is therefore adjudged and decreed by the court that said contract and lease (a copy of which is attached to the petition in this case) be, and the same is hereby, vacated, set aside, and declared null and void. It is further adjudged and decreed that on or before January 1st, 1886, the said Pittsburgh, Cincinnati & St. Louis Railway Company surrender and deliver up to the said Cincin-
91 nati & Muskingum Valley Railway Company its said demised railway and property, including all its depots, engines, cars, and equipment, and all other property belonging to the lessor company, the said property so to be restored to be delivered back in as good order and repair as when received by the lessee or as it was thereafter put in, reasonable wear and tear excepted, the equipments delivered back to be of equal value to that received.

It is further adjudged and decreed that the Pittsburgh, Cincinnati and St. Louis Railway Co. be perpetually enjoined and restrained from operating said leased road under said lease or using said leased road and property further than may be necessary to make a proper adjustment and delivery of said road and property to said lessor company within the time prescribed in this decree or from taking, using, or advancing any of the funds of said lessee company to the lessor company for the purpose of paying interest on the mortgage bonds of said lessor company or the debts of said company or for the operation and maintenance of said leased road except as hereinafter stated.

And the said lessor, the Cincinnati & Muskingum Valley Railway Company, is hereby perpetually enjoined from enforcing or attempting to enforce said lease and contract against said lessee.

92 But this decree is not to interfere with the liability of said lessee company for the debts and expenses incurred while so operating said road under said lease up to the time of the delivery thereof to the said lessor under this decree, or to prevent the advance of its said funds to the treasurer of said Cincinnati & Muskingum Valley Railway Company, of the $52,500 to protect the interest on the mortgage bonds of said latter company due July 1st, 1885, which advance, but no other or further advance in this regard,

the lessee company is authorized and required to make, and the temporary injunction heretofore granted is modified to that extent accordingly.

It is further adjudged and decreed that the defendant's company pay the costs of this proceeding within thirty days, and in default thereof that execution issue therefor.

93 THE STATE OF OHIO, } ss:
Jefferson County, }

I, Ross White, clerk of the court of common pleas within and for said county, hereby certify the foregoing to be truly taken and correctly copied from the journal of said court as the same remains in my office, at Steubenville, Ohio.

Witness my signature and the seal of said court this 24th day of November, A. D. 1885.

[L. S.] ROSS WHITE, *Clerk.*

94 And afterwards, to wit, on the 8th day of Jan'y, A. D. 1886, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

Circuit Court of the U. S., S. D. O., Eastern Division.

CHARLES MORAN
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILROAD COMPANY, The Pittsburgh, Cincinnati and St. Louis Railway Company, and Others, Def'ts.

The replication of Charles Moran, complainant, to the answers filed in the above-entitled cause.

This complainant, reserving to himself all manner of exception to the insufficiency of the said answer and to each of them, says that his bill herein filed is true and sufficient and said answers are and each of them is untrue and insufficient, which he is & will be ready to prove as by this court may be directed, & prays as in his original bill.

HOADLY, JOHNSON AND COLSTON,
Solicitors for Complainant.

94½ And afterwards, to wit, on the 1st day of Feb., A. D. 1886, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

D. B., 56.

Upon application to the court leave is granted the complainant to file his amended and supplemental bill herein forthwith, and the same is filed.

95 And afterwards, to wit, on the 1 day of Feb., A. D. 1886, the following amended and supplemental bill was filed (by leave of court first had & obtained) in the clerk's office of said court, clothed in the words and figures following, to wit:

Amended and Supplemental Bill.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, *et al.*

Amended and supplemental bill of complaint.

Now comes the complainant, Charles Moran, and, by leave of the court here first had and obtained, by way of amended and supplemental bill of complaint, states that since the filing of his original bill herein, to wit, on the first day of January, 1886, there has accrued and grown due coupons or interest warrants upon the bonds described in his original bill of complaint, viz., to the amount of three and one-half per cent. upon the principal sum of $1,500,000 therein named, being in all the sum of $52,500; that said coupons or interest warrants are due, with interest thereon
96 from the 1st day of January, 1886, and are held in part by this complainant and in part by other persons, on whose behalf and as trustee under the said mortgage or deed of trust described in the original bill filed in this cause this complainant brings this amended and supplemental bill in chancery.

And this complainant further states that heretofore, at the October term, 1885, of the court of common pleas in and for the county of Jefferson, in the State of Ohio, the said collusive suit described in said original bill brought by Samuel Jeans *et al.* against the railway companies aforesaid and others proceeded to judgment without opposition on behalf of said railway companies or either of them except of a simulated and unreal character, and that said judgment provided for the dissolution of said lease and for the payment of the interest which matured July 1, 1885, and for other relief, as prayed for in the original petition of said Jeans *et al.* filed therein, but that afterwards and before the adjournment of the said term of said court Evan J. Henry, a stockholder of said Cincinnati and Muskingum Valley Railway Company, holding and owning more than five hundred shares thereof, on his own behalf and that of all other stockholders of said company similarly situated desiring to sustain said lease, appeared in said cause, and by leave of the court filed his answer, as well for said other stockholders as for himself, to said petition of said Jeans *et al.*, and was permitted by said court to give notice according to law of an appeal from said decree,

and did give such notice on the journal of the proceedings of said court, and afterwards perfected said appeal by giving the necessary bond and otherwise as required by law, and said cause is now pending by appeal in the circuit court of the State of Ohio for the county of Jefferson and will in due time be heard therein according to law.

97 And the complainant further avers that the said cause was brought in the Jefferson common pleas, and that said judgment was entered, and said cause is now prosecuted in said circuit court in pursuance of a champertous contract entered into at the instance of the said Pennsylvania Company and the Pittsburgh, Cincinnati and St. Louis Railway Company with J. M. Estep, one or the counsel of said Jeans and others, plaintiffs therein, by said plaintiffs.

Wherefore this complainant prays as in his original bill; and, further, that the decree to be rendered herein may be also based and founded upon the default in payment of the said coupons or interest warrants which matured on the first day of January, 1886, and others that may hereafter mature, and that in default of the payment thereof within a stated time, to be fixed by the court, relief may be had as prayed in said original bill, even although the coupons or interest warrants described in the original bill and which matured on the first day of July, 1885, may be paid or tendered to be paid; and, further, that the defendant The Pittsburgh, Cincinnati and St. Louis Railway Company, in addition to the relief prayed against it in the original bill, may be restrained and enjoined from asserting or pleading the pendency of the said suit in the Jefferson common pleas or the granting of the judgment therein or any judgment that may hereafter be rendered therein by way of defense in any action at law which may be brought upon said lease or upon said coupons or interest warrants or to enforce the performance of any legal duty entered into between said railway companies, and for such other and further relief as the complainant may in equity and good conscience be entitled to.

HOADLY, JOHNSON & COLSTON,
Solicitors for Complainant & of Counsel.

(Endorsed on cover:) Compl't has leave to file this amended bill. Feb'y 1, 1886. Jno. Barter.

98 And afterwards, to wit, on the 3rd day of Feb., A. D. 1886, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Answer of P., C. and St. L. R'y Co. to Am. & Sup. Bill.

99 In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORON
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, *et al.*

Answer of the Pittsburgh, Cincinnati and St. Louis Railway Company to the amended and supplemental bill of complaint.

Now comes the Pittsburgh, Cincinnati and St. Louis Railway Company, by counsel, and, for answer to said amended and supplemental bill of complaint, or so much thereof as it is advised by counsel it is necessary to make answer unto, — and says:

It denies that the suit of Samuel Jeans against the railway companies described in the original bill was collusive, so far as this defendant was concerned, or that the same proceeded to judgment without opposition except of a simulated or unreal character.

100 & 101 This defendant avers that it filed an answer in said suit in the court of common pleas of Jefferson county, Ohio, and that the Cincinnati and Muskingum Valley Railway Company filed a general demurrer to the petition therein, and said demurrer was argued on the part of the plaintiff, but not on the part of the defendant, said Cincinnati and Muskingum Valley Railway Company; and this defendant avers that after said suit was instituted in the court of common pleas of Jefferson county, and while there was yet time to employ counsel to make full and complete defence to said suit, if any such there existed, the president of the Cincinnati and Muskingum Valley Railway Company, by letter duly addressed to Charles Moran, plaintiff herein, requested said Moran to unite and co-operate with other parties interested either as stockholders or bondholders in the preservation of said lease, to the end that said suit brought by Samuel Jeans and others might be successfully resisted and the lease upheld. But said Moran, being thus duly advised of the pendency of the suit in Jefferson county common pleas and requested to unite and co-operate in the defence of the same as aforesaid, declined and refused so to do, and, on the contrary,

102 directed his counsel to begin and prosecute the present suit in this court.

That when said Moran declined and refused to co-operate with other interested parties in resisting said suit in the court of common pleas of Jefferson county, Ohio, the president of the Cincinnati and Muskingum Valley Railway Company—said company being entirely without assets or means wherewith to pay counsel—directed the attorney whom he had employed to resist said suit brought by Jeans and others, that he need give no further attention to the same, alleg-

ing as a reason therefor that the company was without means wherewith to pay counsel and the persons interested in resisting the suit and maintaining the lease had declined to furnish money for that purpose. For the reasons here stated and none other was no other or further opposition made to said suit in the court of common pleas of Jefferson county.

And this defendant, further answering, says that it admits that said court of common pleas of Jefferson county, Ohio, after a full consideration of the merits of the petition filed therein, as tested by the demurrer, rendered a decree declaring said lease null and
103 void, and perpetually enjoined and restrained the lessor and lessee company from enforcing or attempting to enforce any of the provisions of said lease; that some time after said decree had been entered said Evan J. Henry did appear in said court of common pleas and file a certain affidavit and answer in said cause and gave notice of appeal and tendered bond of five hundred dollars, which was accepted; but this defendant denies that the decree heretofore rendered as between Samuel Jeans as plaintiff and The Cincinnati and Muskingum Valley Railway Company and The Pittsburgh, Cincinnati and St. Louis Railway Company as defendants was opened or set aside, and denies that any appeal as to the parties therein interested was affected by the action of Henry, so taken as aforesaid, and avers that said decree declaring said lease null and void and restraining and enjoining the defendants The Cincinnati and Muskingum Valley Railway Company and The Pittsburgh, Cincinnati and St. Louis Railway Company is valid and binding upon said defendants. This defendant therefore denies that said Henry perfected said appeal by giving said bond or otherwise, and denies that said case is now pending by appeal in the circuit court
104 in the State of Ohio and county of Jefferson, as is averred in said amended and supplemental bill of complaint.

And this defendant, further answering, says it denies that said case was brought in the Jefferson common pleas, or that said judgment was entered, or that said cause is now being prosecuted in said circuit court in pursuance of a champertous contract, entered into at the instance of the Pennsylvania Company and the Pittsburgh, Cincinnati and St. Louis Railway Company, or either of them, with J. M. Estep, one of the counsel of said Jeans, and others, by said defendants or either of them.

Wherefore this defendant prays that it may be dismissed hence and allowed its reasonable costs.

J. T. BROOKS AND
C. N. OLDS,
Solicitors for Def't.

STATE OF OHIO, *Franklin County,* } ss:

C. N. Olds, being duly sworn, says that he is one of the solicitors of The Pittsburgh, Cincinnati and St. Louis Railway Company, one of the respondents in this action, and that he believes the statements contained in the foregoing answer to be true. C. N. OLDS.

105 Sworn to by C. N. Olds before me and signed by him in my presence this 26th day of January, A. D. 1886.

EUGENE LANE,
[SEAL.] *Notary Public.*

106 And afterwards, to wit, on 26th day of Feb., A. D. 1886, the following answer of Samuel Jeans was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Answer of Samuel Jeans et al. to Am'd & Sup'l Bill.

107 In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, and Others.

The joint and several and separate answer- of Samuel Jeans, The Trustees of Cadiz Township, Harrison County, Ohio; The Trustees of Rumley Township, Harrison County, Ohio; The Trustees of German Township, Harrison County, Ohio; The Trustees of Steubenville Township, Jefferson County, Ohio, and The City of Steubenville to the amended and supplemental bill of complaint.

These defendants respectively now come, by counsel, and for their joint and several and separate answers to said amended and supplemental bill of complaint, or so much thereof as these defend-
108 ants are advised it is material or necessary for them to make answer to, severally answering, say:

They deny that the suit of Samuel Jeans against the railway companies described in the original bill was collusive, so far as these defendants or any or either of them were concerned, or that the same proceeded to judgment without opposition, except of a simulated or unreal character.

These defendants aver that the Pittsburgh, Cincinnati and St. Louis Railway Company filed an answer in said suit in the court of common pleas of Jefferson county, Ohio, and that the Cincinnati and Muskingum Valley Railway Company filed a general demurrer to the petition therein, and said demurrer was argued on the part of the plaintiff. but not on the part of the defendant, said Cincinnati and Muskingum Valley Railway Company; and these defendants aver that after said suit was instituted in the court of common pleas of Jefferson county and while there was yet time to employ counsel to make full and complete defense to said suit, if any such there existed, the president of the Cincinnati and Muskingum
109 Valley Railway Company, by letter duly addressed to Charles Moran, plaintiff herein, requested said Moran to unite and co-operate with other parties interested either as stockholders or

bondholders in the preservation of said lease to the end that said suit brought by Samuel Jeans and others might be successfully resisted and the lease upheld, but said Moran, being then duly advised of the pendency of the suit in Jefferson county common pleas and requested to *write* and co-operate in the defense of the same as aforesaid, declined and refused so to do, and, on the contrary, directed his counsel to begin and prosecute the present suit in this court.

That when said Moran declined and refused to co-operate with other interested parties in resisting said suit in the court of common pleas of Jefferson county, Ohio, the president of the Cincinnati and Muskingum Valley Railway Company, said company being entirely without assets or means to pay counsel, directed the attorney whom he had employed to resist said suit brought by said Jeans and
110 others that he need give no further attention to the same, alleging as a reason therefor that the company was without means wherewith to pay counsel and the persons interested in resisting the suit and maintaining the lease had declined to furnish money for that purpose. For the reasons here stated and none other was no other or further opposition made to said suit in the court of common pleas of Jefferson county.

And these defendants, further answering, say that they admit that said court of common pleas of Jefferson county, Ohio, after a full consideration of the merits of the petition filed therein as tested by the demurrer, rendered a decree declaring said lease null and void and perpetually enjoined and restrained the lessor and lessee companies from enforcing or attempting to enforce any of the provisions of said lease; that some time after said decree had been entered said Evan J. Henry did appear in said court of common pleas and file a certain affidavit and an answer in said cause, and gave notice of appeal and tendered bond of five thousand dollars, which
111 was accepted; but these defendants deny that the decree theretofore rendered as between Samuel Jeans, as plaintiff, and The Cincinnati and Muskingum Valley Railway Company and The Pittsburgh, Cincinnati and St. Louis Railway Company, as defendants, was opened or set aside, and deny that any appeal as to the parties therein interested was affected by the action of Henry so taken as aforesaid, and aver that said decree declaring said lease null and void and restraining and enjoining the defendants The Cincinnati and Muskingum Valley Railway Company and The Pittsburgh, Cincinnati and St. Louis Railway Company is valid and binding upon said defendants. These defendants therefore deny that said Henry perfected said appeal by giving said bond or otherwise, and deny that said case is now pending by appeal in the circuit court in the State of Ohio and county of Jefferson, as is averred in said amended and supplemented bill of complaint.

And these defendants, further answering, say they deny that said case was brought in the Jefferson common pleas or that said judgment was entered or that said cause is now being prosecuted
112 in said circuit court in pursuance of a champertous contract entered into at the instance of the Pennsylvania Company and the Pittsburgh, Cincinnati and St. Louis Railway Company or either

of them with J. M. Estep, one of the counsel of said Jeans, and others, by these defendants or either of them.

Wherefore these defendants pray that they may be dismissed hence and allowed their reasonable costs.

J. M. ESTEP,
HARRISON OLDS AND MARCH,
Sol'rs for Respondents.

113 STATE OF OHIO, *Harrison County,* } ss:

James N. Hoverfield, D. L. Hughs, and Patrick Lynch, being duly sworn, do depose and say that they are The Trustees of Cadiz Township, Harrison county, Ohio, one of the defendants named in the foregoing answer; that they read the same and know the contents thereof, and that the several matters and things set forth in said answer are, according to the best of their knowledge, information, and belief, true in substance and in fact.

JAS. N. HOVERFIELD.
D. L. HUGHS.
P. LYNCH.

Subscribed and sworn to before me this 23d day of February, A. D. 1886, by James N. Hoverfield, D. L. Hughes, and Patrick Lynch.

JOHN M. GARVEN,
[SEAL.] *Notary Public, Harrison Co., Ohio.*

[Endorsed:] 210. Circuit court of the U. S., so. dist. of Ohio, E. D. Charles Moran *vs.* the P., C. & St. L. R'y Co. *et al.* Answer of Samuel Jeans & others to the amended and supplemental bill. Filed Feb'y 26, 1886. B. R. Cowen, clerk.

114 And afterwards, to wit, on the 16th day of March, A. D 1886, the following depositions of complainant's were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of Charles Moran.

United States Circuit Court, Southern District of Ohio, Eastern Division.

CHARLES MORAN, Plaintiff,
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY *et al.*, Defendants.

Depositions of Charles Moran and Simon Borg, witnesses on behalf of the plaintiff, taken, pursuant to the annexed notice, before Thomas F. Keating, a notary public, at the offices of Platt & Bowers, No. 52 William street, New York city, Friday, March 5, 1886, at 10 a. m.

Appearances: Hon. George Hoadly, for the plaintiff; J. T. Brooks,

Esq., for the Pittsburgh, Cincinnati and St. Louis Railway Co.; J. M. Estep, Esq., for Samuel Jeans and others.

It is stipulated and agreed, by and between the counsel for the respective parties, that these and all other depositions may be taken by a stenographer and his fees taxed as costs, together with the notary's.

CHARLES MORAN, of lawful age, being first duly cautioned and sworn, deposes and says as follows:

By Mr. HOADLY:

Question 1. State your name, age, residence, and occupation.

115 Answer. Charles Moran; 74; reside at 12 East 53rd street, New York city; banker.

Q. 2. What, if any, official connection have you or have you had with the Cincinnati and Muskingum Valley Railway Company, and for what length of time has this lasted?

A. My house, Moran Brothers, was interested in the organization of the road and I am trustee of the first mortgage issued by that company with Mr. Thomson—J. Edgar Thomson.

Q. 3. Please state whether you are and have been a member of the board of directors of the Cincinnati and Muskingum Valley Railway Company; and, if so, how long.

A. They elected me a director from the reorganization in 1877 to the present time.

Q. 4. What amount of stock, if any, in the Cincinnati and Muskingum Valley Railway Company do you or the firm of Moran Brothers own?

A. I gave you the memorandum. I can't tell it from memory. (Looking at memorandum:) Moran Brothers, at the original organization, held 688 shares. I think, however, they were inscribed for a larger amount, because they had others inscribed in their name. Do you want that?

Q. 5. Yes; I want the whole, whatever it is.

A. Then their friends represented 2,229 shares of $50 each.

Q. 6. Are you acquainted with Evan J. Henry; and, if so, where does he live, and is he a stockholder in the Cincinnati and Muskingum Valley railway?

A. Yes, sir. He lives in Princeton, New Jersey.

Q. 7. Please state how many shares he owns.

A. Mr. Henry was in the original organization. He owns 596 shares now. I have the memorandum only of the extension contributions.

Q. 8. Please look at the two certificates now shown you, which the stenographer will identify by his initials under date, and state

116 whether they are genuine and original certificates of stock in the Cincinnati and Muskingum Valley Railway Company, belonging to E. J. Henry, for 596 shares, spoken of in your last answer.

A. They are.

Q. 9. Please state whether you, as a director of the Cincinnati and

Muskingum Valley Railway Company, took any part in the making of the lease of that railway to the Pittsburgh, Cincinnati and St. Louis Railway Company.

A. I might legally be supposed to have taken part as a director, but, in reality, I always considered myself that I took a part as the trustee of the mortgage and as the representative of Moran Brothers' interest and their friends' interest; but the whole was identical, because my duty as a director and as an individual was to develop the company to the utmost possible extent.

(Objected to.)

Q. 10. At the time that lease was made had you or the firm of Moran Brothers any interests as the shareholders or creditors of the Pittsburgh, Cincinnati and St. Louis Railway Company, the Pennsylvania Company, or the Pennsylvania Railroad Company; and, if so, what?

A. None whatever.

Q. 11. The part that you took, if any, in the making of that lease, was it by correspondence or personal interviews, or both?

A. It was almost entirely by correspondence; but I had several interviews with the officers of the Pittsburgh, Cincinnati and St. Louis railway and of the Pennsylvania railroad.

Q. 12. At the time of making the lease and during the negotiations which preceded it who were the presidents of the Pittsburgh, Cincinnati and St. Louis and the Cincinnati and Muskingum Valley Railway Companies?

A. Mr. Thomas L. Jewett was president of the Pittsburgh, Cincinnati and St. Louis Railway Company from 1870 to 1872.

Q. 13. What months?

A. The whole years. I can't tell. I can find out.

117 Q. 14. Who followed Mr. Thomas L. Jewett, and when?

A. From 1870 to 1872 Thomas L. Jewett was president. Thomas A. Scott was elected president and director 1873, 1874, and 1875.

Q. 15. Who was president during this time of the Cincinnati and Muskingum Valley Railway Company?

A. H. J. Jewett was president from the reorganization, in 1870, to 1874, inclusive; Thomas A. Scott was president in 1875 and Thomas D. Messler from 1876 to 1885.

Q. 16. From 1876 until now?

A. Yes, sir.

Q. 17. Who composed the firm of Moran Brothers in 1872 and 1873, during the negotiations and at the time of the execution of the lease already referred to?

A. Charles Moran, Daniel E. Moran, and D. C. Moran—Daniel Comyn Moran.

Q. 18. What connection has the banking-house of Moran Brothers had with the payment of coupons on the first-mortgage bonds of the Cincinnati and Muskingum Valley Railway Company since the execution of the lease?

A. We were the persons who paid the coupons; we were the agents to pay the coupons. They remitted us the money.

Q. 19. From whom did the firm of Moran Brothers receive the money to pay the coupons?

A. Sometimes from the Cincinnati and Muskingum officials and sometimes from the Pittsburgh, Cincinnati and St. Louis railroad.

Q. 20. Please look at the letters and telegrams now shown you, as follows: M. C. Spencer, treasurer, dated Pittsburgh, December 30, 1873; the same, June 29, 1874; the same, December 30, 1874; the same, telegram, December 31, 1874; the same, letter, June 30, 1875; the same, letter, December 29, 1875; the same, telegram, December 30, 1875; the same, letter, June 29, 1876; the same, telegram, July 5, 1876; the same, letter, July 6, 1876; the same, letter, July 27, 1876; the same, letter, December 29, 1876; the same, tele-
118 gram, December 30, 1876; the same, letter, December 30, 1878; the same, telegram, December 31, 1878. The stenographer will please number these exhibits 1 to 15, inclusive, and attach them to the deposition. Now please state whether these are original letters and telegrams received by Moran Brothers at or about their respective dates, and from whom they were received and how.

A. The telegrams came through the telegraph company; the others came by mail; they all seem to be from M. C. Spencer.

Q. 21. Who is he?

A. He was an official of the Pittsburgh, Cincinnati, and St. Louis Railway Company; but, without referring to authorities, I can't tell what his position was; treasurer I think he was, but I haven't charged my mind what the position was. Yes; he signs "treasurer," and it is dated "office of the treasurer, Pittsburgh, Cincinnati and St. Louis railway."

Q. 22. Some of these letters speak about containing remittances of money. Please state whether drafts or checks were found inclosed by your firm in these letters upon receipt of them and to what the money thus remitted was appropriated.

A. They contained the remittances advised in the letters, with instructions to apply them to the payment of the maturing coupons of the Cincinnati and Muskingum Valley railway. Of course the telegrams contained no remittances; they referred to them; the letters show what they contained, and they were all found correct.

Q. 23. The second item of the first clause of the lease of the Cincinnati and Muskingum Valley railway to the Pittsburgh, Cincinnati, and St. Louis Railway Company contained the following proviso: "Provided, however, that in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any
119 such advance over the net earnings in open account, to be returned out of the subsequent earnings and not otherwise." Please state with whom this clause originated in the negotiations for the making of this lease.

A. I insisted upon its being inserted.

Q. 24. To whom did you so insist upon its being inserted?

A. To every one of the officials with whom I came in contact.

Q. 25. Who were these officials?

A. Mr. Scott was one, particularly—Thomas A. Scott.

Q. 26. Please state whether the insertion of this clause in the lease originated with or was favored by the president or any of the directors or officers of the Pittsburgh, Cincinnati and St. Louis Railway Company, the Pennsylvania Railroad Company, or the Pennsylvania Company; and, if so, by which of them and how.

(Objected to.)

A. By none of them.

Q. 27. Please state whether, if this was conceded, it was conceded willingly or reluctantly.

(Objected to.)

A. Reluctantly, as proved by the correspondence.

Q. 28. I am referring now to the interviews you had with Thomas A. Scott. Please state whether in such interviews Mr. Scott urged or opposed the insertion of this clause into the lease.

(Objected to.)

A. He never consented.

Q. 29. That don't answer my question.

A. He never urged it—of course not. He never urged it nor advocated it.

Q. 30. How many interviews did you have with Mr. Scott upon the subject of the making of this lease? If you are able to separate them and state what occurred at each please do so.

A. It would be perfectly impossible; the thing occurred so long ago. I had two or three interviews with him, I think, but I am not positive.

119½ Q. 31. Can you state the substance of the interviews which you did have, what occurred between you and him, what position he took and what position you took with regard to the making of the lease, and especially with regard to the clause to which I have directed your attention?

(Objected to.)

A. Mr. Scott took no special position, because previously they had sent me a scheme of the lease, but I opposed any lease that would not protect the bonds fully, come what would.

Q. 32. What proportion of the stock in the Muskingum Valley railway was held at the time of these negotiations by Charles Moran or Moran Brothers and their friends?

A. I can't tell you exactly; it was a minority, of course; I can get you the exact figures.

Q. 33. Can you state from memory, without referring to books or papers, whether Charles Moran or Moran Brothers and their friends who were acting with them at the time held more or less than one-

third of the shares of capital stock of the Cincinnati and Muskingum Valley Railway Company?

A. I can't fix the percentage. I can give you the aggregate amount. I will have to send for it. I can't carry those in my head. I have the *pro rata* of the shares to the extension.

Q. 34. Never mind that. Please look at the copy of letter now shown you, dated New York, September 13, 1871, attached to your deposition and marked Exhibit 16, from Charles Moran to Edmund Smith, third vice-president Pennsylvania Railroad Company, and state whether the original was sent to Mr. Smith and whether this is a true copy of said original.

(Mr. Brooks objects to the admission of all letters between Charles Moran or Moran Brothers and the officials of the Pennsylvania Railroad Company as incompetent.)

A. Yes, sir.

120 Q. 35. You mean by yes, sir, that it was mailed to Edmund Smith, the third vice-president, at his address, as stated, and is a true copy of the original thus mailed?

A. Yes, sir.

Q. 36. Look at the letter now shown you, marked Exhibit 17, from Edmund Smith, third vice-president, to Charles Moran, dated September 18, 1871, and state whether it is an original letter received by you and from whom it was received.

A. It is an original letter received from Edmund Smith, third vice-president.

Q. 37. Please look at the copy of letter now shown you, from Charles Moran to Thomas A. Scott, dated New York, May 8, 1872, and state whether it is or not a true copy of a letter mailed on that day by you to Col. Thomas A. Scott, at Philadelphia. Mark the copy Exhibit 18, and attach it to your deposition.

A. It is, sir.

Q. 38. In this letter you say "After perusing the proposed lease of the Cincinnati and Muskingum Valley Railway Company," etc. Please state from whom you had received that proposed lease, if you remember.

A. I must have received it from Mr. Scott or some other official. I don't remember. I say, "After perusing the proposed lease." I don't state who I got it from. Generally it came from them, but might have been sent by somebody else.

Q. 39. Please look at the paper now handed you, marked Exhibit 19, and state whether it is or not the proposed lease of the Cincinnati and Muskingum Valley railway referred to in your letter, Exhibit 18 aforesaid; and, if so, attach it to your deposition.

A. Yes, sir; that is the proposed lease.

Q. 40. Please look at the paper now shown you, purporting to be a letter from Thomas A. Scott, president, per G., to Charles Moran, dated Philadelphia, May 9, 1882, under the heading of Pittsburgh, Cincinnati and St. Louis Railway Company, office of the president, and state whether this is a genuine original received by you

121 at or soon after the day of its date from Col. Scott, and mark it Exhibit 20 and make it part of your deposition.

A. It is, sir.

Q. 41. In the body of this letter Col. Scott says: "In doing this we supposed that we were doing the very best thing for our eight-thirteenths of the property and, of course, putting your five-thirteenths on the same basis as our own investment." Will you please state whether, according to the best of your recollection, these figures $\frac{8}{13}$'s and $\frac{5}{13}$'s represent the different proportionate ownership in stock of the Cincinnati and Muskingum Valley railway held by the two parties or their friends whom they represented?

A. As far as my memory serves, that is probably a fair approximate.

Q. 42. Lookat the paper now shown you, marked Exhibit 21, and attach it to your deposition, purporting to be a letter from yourself to Thomas A. Scott, dated May 19, 1872, and state whether it is a true copy of an original mailed by you to Col. Scott, as stated.

A. Yes, sir.

Q. 43. Please look at the paper now shown you and attach it to your deposition and mark it Exhibit 22, purporting to be a letter from yourself to Thomas A. Scott, dated May 11, 1872, and state whether it is or not a true copy of an original mailed by you to Mr. Scott about the date which it purports to bear.

A. Yes, sir; it is.

Q. 44. Please look at the paper now shown you and attach it to your deposition and mark it Exhibit 23, purporting to be a letter from yourself to Mr. Scott, at Philadelphia, dated May 25, 1872, and state whether it is or not a true copy of an original letter mailed by you on the day it bears date to Mr. Scott at Philadelphia.

A. Yes, sir.

Q. 45. Please look at the paper now shown you, mark it Exhibit 24, and attach it to your deposition, purporting to be a letter
122 from yourself to Thomas A. Scott, dated June 6, 1872, and state whether it is a copy of an original letter mailed on the day of its date by you to Mr. Scott.

A. Yes, sir; it is.

Q. 46. Look at the paper now shown you, mark it Exhibit 25 and attach it to your deposition, purporting to be a letter from yourself, of date June 7, 1872, to Thomas A. Scott, Philadelphia. Please state whether this is a true copy of an original mailed by you to Mr. Scott on the day on which it bears date.

A. Yes, sir.

Q. 47. In the postscript to this letter you speak of receiving Col. Scott's telegram of that date, and you agree to meet him in Pittsburgh on Monday. Please state whether you did meet him in Pittsburgh on the Monday spoken of and whether you had an interview with him in Pittsburgh on the subject of the proposed lease of the Cincinnati and Muskingum Valley railroad.

A. I think I did meet him. I went on once, and I met him in the railroad car, and we went some distance and talked on the subject together.

Q. 48. Have you made search or had a search made for you by your clerks or partners for the telegram spoken of in this postscript; and, if so, has it been found?

A. I can't reply to that. I don't know whether it has or not. I think we have it, but whether we looked for it and found it I am not sure. They are all in the papers there, if we found them, I think. We have got it, I am pretty sure.

Q. 49. If you find this telegram hereafter, before the deposition is closed, will you please attach it to the deposition?

A. I will.

Q. 50. Look at the letter now shown you, purporting to be from Thomas A. Scott, per G., under the heading of Pittsburgh, Cincinnati and St. Louis Railway Company, office of the president, dated October 12, 1872, make it part of your deposition, and mark it Exhibit 26, and state whether it is an original letter received by you by mail at or about its date.

123 A. Yes, sir; it is.

Q. 50½. Look at the paper now shown you, purporting to be your letter to Thomas A. Scott, dated October 15, 1872, make it part of your deposition, and mark it Exhibit 27, and state whether it is a true copy of an original mailed by you on the day of its date to Col. Scott at Philadelphia.

A. Yes, sir.

Q. 51. Look at the paper now shown you, mark it Exhibit 28, and make it part of your deposition, purporting to be a copy of a letter from yourself to Col. Scott at Philadelphia, dated October 18, 1872. Please state whether this is a true copy of an original mailed by you on the day of its date to Col. Scott.

A. Yes, sir.

Q. 52. In this letter you say, "I have your telegram of 17th inst. from Pittsburgh." Please state whether you have made a search for that telegram; and, if so, whether you have been able to find it.

A. It is not marked as having been found; we may have it.

Q. 53. Has it been searched for?

A. I think it has; yes, sir. They may have found it since, but it is very difficult to keep telegrams, you know.

Q. 54. Have you any recollection of the contents of this telegram other than that which is stated in your letter of October 18th?

A. No, sir; that is the only thing that would bring it back to me.

Q. 55. Look at the letter now shown you, mark it Exhibit 29, and make it part of your deposition, purporting to be a letter from H. J. Jewett, president, at Zanesville, Ohio, to T. A. Scott, G. B. Roberts, and Charles Moran, directors, dated November 15, 1872, and state whether this is an original letter signed by President Jewett; and, if so, how you received it.

A. I suppose it was received by mail, but from memory I cannot say about it. It may have been included in a letter from somebody else.

Q. 56. Is it a genuine original?

124 A. Yes, sir; I know the handwriting.

Q. 57. You know the signature?

A. It is in the handwriting of one of the clerks, but it is Mr. Jewett's signature.

Q. 58. Look at the paper now shown you, mark it Exhibit 30, and attach it to your deposition, purporting to be a copy of a letter from yourself to Thomas A. Scott, dated November 18, 1872, and state whether it is a true copy of an original letter mailed on the day of its date to Col. Scott or not.

A. Yes, sir; it is.

Q. 59. Look at the letter now shown you, purporting to be from Thomas A. Scott to yourself, under the heading Pittsburgh, Cincinnati and St. Louis Railway Company, office of the president, dated November 19, 1872, mark it Exhibit 31, and make it part of your deposition, and state whether it is a genuine original received on or about the day of its date from Col. Scott.

A. Yes, sir.

Q. 60. In this letter Col. Scott says: "Our idea of the Muskingum Valley line, if we had taken it under the lease, was to put on additional equipment and develop its coal trade both to Cincinnati and to Cleveland, to effect which we have been endeavoring to arrange to get a line built from Dresden junction, the point of connection with the Pittsburgh, Cincinnati and St. Louis railway, over to the Cleveland and Mt. Vernon road, a distance of about thirty miles. This would give the road a very good outlet to the lake at Cleveland, and the coal would there find a large market." Will you please state whether anything has been done since the date of this letter, November 19, 1872, and what, toward building this line or procuring it to be built so as to connect Dresden junction with the Cleveland and Mt. Vernon road?

A. Nothing that I know of.

Q. 61. Look at the paper now shown you, purporting to be a copy of a letter from yourself to H. J. Jewett, president Cincinnati and Muskingum Valley Railway Company, dated December 2,
125 1882, attach it to your deposition, and mark it Exhibit 32, and state whether it is a true copy of an original mailed by you on the day of its date to Mr. Jewett at Zanesville or not.

A. Yes, sir.

Q. 62. Look at the paper now shown you, purporting to be a copy of a letter from same to same, dated 4th December, 1872, attach it to your deposition and mark it Exhibit 33, and state whether it is a true copy of an original mailed by you to President Jewett, at Zanesville, on the day of its date as stated on its face.

A. Yes, sir.

Q. 63. Please look at the letter now shown you, mark it Exhibit 34 and attach it to your deposition, purporting to be an original letter from H. J. Jewett, president Cincinnati and Muskingum Valley Railway Company, dated December 9, 1872, to yourself, and state whether it is a genuine original received by you by mail soon after the day of its date.

A. Yes, sir.

Q. 64. In this letter Mr. Jewett says: "Enclosed please find copies of letters received by me from Col. Scott in relation to the lease of

Cincinnati and Muskingum Valley road; also a copy of the lease prepared in conformity to those letters and previous instructions received from him; also a copy of the resolution of the C. & M. V. board, passed at their meeting on Friday last." Please look at the paper now shown you, mark it Exhibit 35 and attach it to your deposition, and state whether it is the original paper referred to in this letter of President Jewett containing copies of letters, copy of lease, and copy of resolutions of C. & M. V. board.

A. Yes, sir.

Q. 65. Look at the paper now shown you, mark it Exhibit 36 and attach it to your deposition, purporting to be a letter from yourself to Thomas A. Scott, dated December 4, 1872, and state whether it is a true copy of an original mailed by you to Col. Scott on the day of its date.

A. Yes, sir.

126 Q. 66. Are you acquainted with Col. M. Churchill and Mr. E. E. Fillmore, of Zanesville, Ohio; and, if so, what official positions did they occupy in the Cincinnati and Muskingum Valley Railway Company before and after the 10th day of December, 1872?

A. I don't know the gentlemen personally, but I have corresponded with them. They were directors in the Cincinnati and Muskingum Valley.

Q. 67. Please state whether these gentlemen were also, during the years 1872 and 1873, directors in the Pittsburgh, Cincinnati and St. Louis Railway Company or not.

A. I don't know.

Q. 68. Look at the letter now shown you, purporting to be a letter and postscript from M. Churchill and E. E. Fillmore to yourself, dated Zanesville, Ohio, December 10, 1872, attach it to your deposition and mark it Exhibit 37, and state whether it is or not an original letter received by you by mail, purporting to be from those gentlemen about or soon after the day of its date.

A. It is.

Q. 69. Look at the paper now shown you—mark it Exhibit 38 and attach it to your deposition—purporting to be a copy of a letter from yourself to M. Churchill and E. E. Fillmore, at Zanesville, Ohio, dated December 13, 1872, and state whether it is a true copy of an original mailed on the day of its date by you to those gentlemen at said address.

A. Yes, sir; it is.

Q. 70. Look at the paper now shown you—mark it Exhibit 39 and make it a part of your deposition—purporting to be a copy of a letter from yourself to Thomas A. Scott, president P., C. and St. L. R'y Co., dated New York, December 12, 1872, and state whether it is a true copy of an original mailed by you to Col. Scott, at Philadelphia, on the day of its date.

A. Yes, sir.

Q. 71. In your letter of December 13th to Messrs. M. Churchill and E. E. Fillmore, at Zanesville, Ohio, you say, "I send you in-

closed copy of my letter of 12th instant to Col. Thomas A.
127 Scott on the subject of the proposed lease, a copy of which I also send to Mr. Jewett, president of your company." Will you please state whether the paper just shown you (Exhibit 39) is the copy referred to in the passage I have quoted from your letter to Messrs. Churchill and Fillmore, and whether you did send, as therein stated, copies of that letter to them and to President Jewett?

A. I did, sir.

Q. 72. Look at the paper now shown you—mark it Exhibit 40 and attach it to your deposition—purporting to be a copy of a letter from yourself to Messrs. Churchill and E. E. Fillmore, at Zanesville, December 28, 1872, and state whether it is a true copy of an original mailed by you on the day of its date to those gentlemen.

A. Yes, sir.

Q. 73. Look at the letter now shown you, purporting to be an original letter from Messrs. Churchill and Fillmore, at Zanesville, to yourself, with postscript from Mr. Fillmore, dated January 1, 1873, attach it to your deposition and mark it Exhibit 41, and state whether this is an original letter and postscript received by you by mail at or soon after the day of its date.

A. It is.

Q. 74. Look at the paper now shown you, purporting to be a copy of a letter from yourself to Messrs. Churchill and Fillmore, at Zanesville, dated January 6, 1873, and state whether it is or not a true copy of an original letter mailed by you on the day of its date to those gentlemen, at Zanesville. Attach it to your deposition and mark it Exhibit 42.

A. Yes, sir.

Q. 75. Look at the letter now shown you—attach it to your deposition and mark it Exhibit 43—dated December 25, 1872, purporting to be an original letter from H. J. Jewett, president, to you, and state whether it is a genuine original from that gentleman or not.

A. Yes, sir; it is.

Q. 76. Look at the paper now shown you—attach it to your
128 deposition and mark it Exhibit 44—purporting to be a copy of an original letter written by you to President Jewett, at Columbus, Ohio, dated December 12, 1872, and state whether it is a true copy of an original mailed on the day of its date to President Jewett, as stated.

A. It is.

Q. 77. Look at the letter now shown you, mark it Exhibit 45, and make it part of your deposition; it purports to be a letter from Edmund Smith, third vice-president Pennsylvania Railroad Company, to yourself, dated September 12, 1871; please state whether it is an original letter received by you at or about the day it bears date.

A. Yes, sir.

Q. 78. Look at the letter now shown you, mark it Exhibit 46, and attach it to your deposition; it purports to be from Thomas A. Scott, president, per G., under the heading Pittsburgh, Cincinnati and St. Louis Railway Company, office of the president, dated May

28, 1872, to yourself; please state whether it is or not a genuine original received by you from Col. Scott at or about the day it bears date.

A. Yes, sir.

Q. 79. Look at the letter now shown you, dated Zanesville, November 29, 1872, from J. A. Lippincott, the secretary, to yourself, attach it to your deposition and mark it Exhibit 47, and state whether it is an original received from that gentleman by mail about or soon after the day of its date.

A. Yes.

Q. 80. Look at the letter now shown you, attach it to your deposition and mark it Exhibit 48, purporting to be from H. J. Jewett, president, dated Columbus, November 29, 1872, to yourself, and state whether it is a genuine original received from President Jewett about or soon after the day of its date.

A. Yes, sir; it is.

Q. 81. Did you attend the meeting of the board of directors referred to in this correspondence with Mr. Lippincott and Mr. Jewett, or not?

129 A. I did not. I never attended a single meeting of the directors.

Q. 82. Look at the paper now shown you, purporting to be a copy of a letter from yourself to President Jewett, at Columbus, dated March 20, 1873, and attach it to your deposition, and mark it Exhibit 49, and state whether it is a true copy of a genuine original mailed by you to Mr. Jewett on the day of its date.

A. Yes, sir; it is.

Q. 83. Look at the letter now shown you, purporting to be from President Jewett to yourself, dated Columbus, March 24, 1873, attach it to your deposition, and mark it Exhibit 50, and state whether it is a genuine original from Mr. Jewett soon after the day of its date or not.

A. Yes, sir.

Q. 84. Look at the printed copy now shown you, headed "$1,500,000 of the first-mortgage seven per cent. bonds of the Cincinnati and Muskingum Valley Railway Company of Ohio," and signed in print Hugh J. Jewett, president, with a postscript, signed J. Edgar Thomson. Make it a part of your deposition and mark it Exhibit 51, and state from whom you received it.

(The prospectus and the letter are objected to.)

A. From Messrs. E. W. Clark & Co., bankers, Philadelphia.

Q. 85. Please state who Messrs. E. W. Clark & Co. held themselves out as representing in sending you this circular.

A. I think as the agent of the Pennsylvania railroad; I am not sure. If you will give me the letter, it is stated there distinctly. They were the agents of the Pennsylvania railroad.

Q. 86. Do you know or have you any information which you can communicate as to the extent to which this printed circular was circulated in the business community of New York and elsewhere?

(Objected to.)

A. No knowledge of my own.

130 Q. 87. Are you acquainted with Thomas D. Messler, whom you have heretofore spoken of in your correspondence? If so, state what connection Mr. Messler has now and has had in the past years with the Pittsburgh, Cincinnati and St. Louis Railway Company.

A. Yes, sir; I am well acquainted with Mr. Messler; he has held the positions of comptroller, director, assistant to the president and comptroller, and third vice-president.

Q. 88. Please state whether or not within your knowledge Mr. Messler has been continuously since before 1876 until now in the employment of the Pittsburgh, Cincinnati and St. Louis Railway Company in some capacity or another, as well as president of the Cincinnati and Muskingum Valley Railway Company.

A. He has been all the time in one capacity or another.

Q. 89. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 52, purporting to be a copy of an original letter sent by you to President Messler October 27, 1876, and state whether it is a true copy of an original letter mailed by you to Mr. Messler on the day of its date.

A. Yes, sir.

Q. 90. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 53; it purports to be an original letter from Thomas D. Messler, president, of Pittsburgh, to yourself, dated October 30, 1876. State whether this is a genuine original received by you by mail from President Messler about or some time after its date.

A. Yes, sir; at that time he was president of the Cincinnati and Muskingum Valley.

Q. 91. Look at that paper now shown you, mark it Exhibit 54, and attach it to your deposition, purporting to be an original letter from Thomas D. Messler to yourself, dated November 3, 1876, and state whether it is a genuine original received by you by mail from President Messler about or soon after the day of its date, and also state whether the statement attached to it was inclosed with it to you.

A. Yes, sir.

131 Q. 92. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 55, purporting to be a copy of a letter from yourself to Thomas A. Scott, president Pennsylvania Railroad Company at Philadelphia, dated November 6, 1876. Please state whether it is a true copy of an original mailed by you to Col. Scott about the day of its date.

A. Yes, sir.

Q. 93. Look at the paper now shown you and attach it to your deposition and mark it Exhibit 56. It purports to be a copy of a letter from yourself to President Messler, at Pittsburgh, dated November 22, 1876. Please state whether it is a true copy of a genuine original mailed by you to Mr. Messler on the day it bears date.

A. Yes, sir.

Q. 94. Look at the paper now shown you, purporting to be a copy

of an original letter written by you to Thomas A. Scott, Philadelphia, December 12, 1876, attach it to your deposition, and mark it Exhibit 57, and state whether it is a true copy of a genuine original mailed by you to Col. Scott on that day.

A. Yes, sir.

Q. 95. In this letter you say, "I inclose copy of letters written to you on the 6th of November last, and to Thomas D. Messler, president C. & M. V. Co., on 22nd of November, to neither of which have I ever received any reply." Please state whether Exhibits 55 and 56 are copies of the letters referred to in this passage and whether they were enclosed in this letter to Col. Scott.

A. Exhibits 55 and 56 are the letters referred to in this passage.

Q. 96. Look at the paper now shown you and attach it to your deposition, marking it Exhibit 58, which purports to be a copy of a letter from yourself to Thomas A. Scott, Esq., president Pennsylvania Railroad Company, Philadelphia, dated February 6, 1877, and state whether it is a true copy of an original letter mailed by you on the day of its date to Col. Scott, as stated.

A. Yes, sir.

132 Q. 97. In the copy of letter just shown you you speak of having taken legal steps to prevent the cancellation of the lease of the Cincinnati and Muskingum railway to the P., C. & St. L. Company. Will you please state what legal steps have been taken of which this mention is thus made?

A. I filed a bill in the United States courts at Cincinnati to prevent the cancellation.

Q. 98. Who was your solicitor in that proceeding?

A. Mr. Frederick Lane here and Messrs. Reemelin & Reemelin, at Cincinnati.

Q. 99. Is Mr. Lane living or dead?

A. Dead.

Q. 100. Were Reemelin & Reemelin solicitors in the case or only representatives of Mr. Lane?

A. Only representatives of Mr. Lane.

Q. 101. Look at the telegram from Thomas D. Messler, president, now shown you, dated February 6, 1877, and attach it to your deposition and mark it Exhibit 59. Please state whether you received this telegram on the day of its date or not.

A. Yes, sir.

Q. 102. Please state whether on the day of its receipt you answered it by telegram; and, if so, produce a copy of the answer, attach it to your deposition, and mark it Exhibit 60.

A. This is a copy in my own handwriting.

Q. 103. Made at the time?

A. Yes, sir; the 6th of February.

Q. 104. Look at the telegram now shown you, from Thomas D. Messler, president, Pittsburgh, dated February 7, attach it to your deposition, and mark it Exhibit 61, and state whether you received it on the day of its date or not.

A. Yes, sir.

Q. 105. Look at the telegram now shown you, from Thomas D.

Messler, Philadelphia, dated February 9, 1877, addressed to you, mark it Exhibit 62, and attach it to your deposition, and state whether it was received by you on the day of its date.

133 A. Yes, sir.

Q. 106. Look at the telegram now shown you, from Thomas D. Messler, Pittsburgh, attach it to your deposition, and mark it Exhibit 63. Its date is February 14, 1877. State whether you received it on the day of its date.

A. Yes, sir.

Q. 107. Now look at the letter of Thomas D. Messler, president, to yourself, dated February 12, 1877, attach it to your deposition, and mark it Exhibit 64, and state whether this letter was received about or shortly after the day of its date by mail from him; also look at the paper accompanying it, purporting to be a certified copy of the proceedings of a special meeting of the board of directors of the Pittsburgh, Cincinnati and St. Louis Railway Company, and state whether that paper was received by you enclosed in the letter of February 12, as therein stated.

A. Yes, sir.

Q. 108. Look at the paper now shown you, purporting to be a copy of a letter from yourself to Thomas A. Scott, Philadelphia, dated January 6, 1873, attach it to your deposition, and mark it Exhibit 65, and state whether it is a true copy of a letter mailed on the day of its date to Col. Scott, as stated.

A. Yes, sir.

Q. 109. Look at the paper now shown you, purporting to be a copy of a letter from yourself to Thomas D. Messler, president, dated February 20, 1877, attach it to your deposition, and mark it Exhibit 66, and state whether it is or not a true copy of a letter mailed on the day of its date to President Messler.

A. Yes, sir.

Q. 110. Look at the letter now shown you, attach it to your deposition, and mark it Exhibit 67. It purports to be an original letter from Thomas D. Messler, president, to yourself, dated Pittsburgh, February 23, 1877. Please state whether this is a genuine original received by you by mail from President Messler about or soon after the day of its date.

A. Yes, sir.

134 Q. 111. Look at the paper now shown you, purporting to be a copy of a letter from yourself to President Messler, at Pittsburgh, dated Feb. 26, 1877, attach it to your deposition and make it a part thereof, mark it Exhibit 68, and state whether it is a true copy of an original letter mailed to Mr. Messler, at Pittsburgh, on the day of its date.

A. Yes, sir.

Q. 112. Look at the paper now shown you, purporting to be a copy of a letter from yourself to President Messler, dated April 2, 1877, and attach it to your deposition, and mark it Exhibit 69, and state whether it is a true copy of an original mailed by you to Mr. Messler, at Pittsburgh, on the day of its date.

A. Yes, sir.

Q. 113. Look at the letter now shown you, purporting to be from President Messler to yourself, dated April 14, 1887, attach it to your deposition, and mark it Exhibit 70, and state whether it is an original letter received about or soon after the day of its date by mail from Mr. Messler, at Pittsburgh.

A. Yes, sir.

Q. 114. Look at the paper now shown you, purporting to be a copy of a letter from yourself to President Messler, at Pittsburgh, dated April 21, 1877, attach it to your deposition, and mark it Exhibit 71, and state if it is a true copy of an original mailed on the day of its date by yourself to Mr. Messler, as stated in the address.

A. Yes, sir.

Q. 115. Look at the letter now shown you, purporting to be an original letter from President Messler to yourself, dated April 25, 1887, attach it to your deposition, and mark it Exhibit 72, and state whether it was recived by you by mail from Mr. Messler about or soon after the day of its date.

A. Yes, sir.

Q. 116. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 73, purporting to be a copy of a letter from yourself to President Thomas D. Messler, dated Novem-
135 ber 30, 1877, and state whether it is a true copy of an original letter mailed by you to Mr. Messler, at Pittsburgh, on the day of its date, as would appear from the address.

A. Yes, sir.

Q. 117. Look at the letter now shown you, attach it to your deposition, and mark it Exhibit 74. It purports to be an original letter from Thomas D. Messler, president, to yourself, dated May 5, 1877. Please state whether it is a genuine original letter received by you about or soon after the day of its date.

A. Yes, sir.

Q. 118. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 75. It purports to be a copy of a letter sent by you to President Messler, at Pittsburgh, May 8, 1877. Please state whether the original of which this was a copy was mailed on the day of its date by you to Mr. Messler at his address, at Pittsburgh, as stated.

A. Yes, sir.

Q. 119. Look at the paper now shown you, purporting to be a copy of a letter from yourself to Thomas A. Scott, Philadelphia, dated New York, February 19, 1880, attach it to your deposition, and mark it Exhibit 76, and state whether it is a true copy of an original letter mailed by you on the day of its date to Col. Thomas A. Scott, of Philadelphia, as stated in the address.

A. Yes, sir.

Q. 120. Look at the letter now shown you, attach it to your deposition, marking it Exhibit 77, purporting to be a letter from Thomas A. Scott, president of the P., C. & St. L. Railway Company, to yourself, dated February 20, 1880, and state whether it is an original letter received about or soon after the day of its date.

A. Yes, sir.

Q. 121. Look at the paper now shown you, attach it to your deposition, marking it Exhibit 78, purporting to be a copy of a letter from yourself to Thomas A. Scott, dated February 24, 1880,
136 and state whether this is a true copy of the original which was mailed on the day of its date to Col. Scott, as stated in the address.

A. Yes; I remember writing it.

Q. 122. Please state in what year, as near as you can remember, the Muskingum Valley railway was extended from Zanesville to Dresden and how the money was raised to pay for the extension.

A. I think it was in 1871, sir. The money was raised by the issue of 200,000 first-mortgage bonds and by the issue of new shares.

Q. 123. To what amount?

A. Well, that I can't tell you without my memorandum.

Q. 124. Please state at what rate on the dollar the bonds were sold to provide means for making the extension and whether the shares were paid for in cash or were issued as a bonus to parties buying bonds or otherwise.

A. The bonds were taken by the shareholders and by some of the parties in interest in it, and they paid 85 cents on the dollar cash, and the shares were paid par in cash.

Q. 125. Was there any other source from which money was received for making the extension except the sales of bonds at 85 and the issue of new stock at par, both paid for in cash?

A. I think not. I know of none.

Q. 126. Will you please state the amount which Moran Brothers and their friends took in this new stock at par, paying therefor at par in cash?

A. Yes, sir; Moran Brothers paid in cash for 2,229 shares of $50 each, and Mr. E. J. Henry was one of our friends, and he paid for 46 shares.

Q. 127. Look at the letter now shown you and attach it to your deposition, marking it Exhibit 79, purporting to be from Thomas D. Messler, president, to yourself, dated Pittsburgh, March 15, 1883, and state whether it is an original letter received by you about or soon after the day of its date from President Messler.

A. Yes, sir.

137 Q. 128. Look at the paper now shown you and attach it to your deposition, marking it Exhibit 80, and make it part thereof. It purports to be a copy of a letter addressed by yourself to President Messler, at Pittsburgh, dated March 17, 1883. State whether it is a true copy of an original mailed by you on the day of its date to President Messler.

A. Yes, sir.

Q. 129. In this letter you state the following: "But looking over some old papers I found a statement of subscriptions to capital stock of that company, in which the authorized capital stock is stated at $4,000,000, of which—

$401,350 individual subscriptions.
25,000 city of Zanesville subscription.
2,218,400 Pennsylvania R. R. Co.
1,327,750 Moran Brothers, for selves and others.
27,500 E. J. Henry.

$4,000,000."

Please state whether this statement accords with your present best memory as to the original capital stock and how the same was paid.

A. That was part of the origiual organization. It was the compensation for the road. That was for the old road.

Q. 130. What was the name of the old road?

A. The Cincinnati and Zanesville.

Q. 131. Had it been sold upon foreclosure?

A. Yes, sir; and bought in.

Q. 132. By whom was it bought in?

A. Mr. Thomas L. Jewett.

Q. 133. As the representative of others or for himself?

A. Well, I don't know. We had an understanding that we would share in the reorganization.

Q. 134. These figures—do they represent or not original investments in the old company?

A. This was to represent the original cost of the old road.

Q. 135. State whether the amount stated in these figures in the letter of March 17, 1873, to Mr. Messler was an actual cash investment in the original road represented by these sums in the new road or not.

138 A. Yes; but there was a great deal more than that spent in the old road.

Q. 136. Was the amount more than that which was spent in the old road spent by the parties named in these figures or others?

A. No; this was a part of the reorganization plan. The old bonds were replaced by new bonds of the same amount, and then the parties who put in their bonds in the reorganization and had been in the purchase received, in addition to the bonds, the amount of shares in the *pro rata* of their bonds out of the $4,000,000.

Q. 137. Did this $4,000,000 represent a cash investment or was it merely a bonus to bondholders?

A. It was a bonus to bondholders for joining in the purchase of the road and turning it over to the new organization. The road cost a great deal more than the bonds and the $4,000,000, and if we bought it at a sacrifice we had a right to enjoy the profit, putting it in shares, of course. It was no burden to the railroad. They only became responsible as far as the bonds.

Q. 138. Then, if I understand it correctly, the bondholders of the old road bought it in upon foreclosure?

A. Some of the parties.

Q. 139. Some of the bondholders of the old road bought it in upon foreclosure and sold it to the new road for bonds and stock?

A. Yes, sir.

Q. 140. The letter proceeds to state as follows: "Afterwards new issues of shares were made to meet cost of constructions of the connection between Zanesville and Dresden, of which Moran Brothers and their friends took 2,188 shares of $50 each, for which they paid par in installments, say $109,400, which is now totally worthless, owing to the cruel and unjust policy pursued by the Pennsylvania railroad to throw their entire business on the Pittsburgh, Cincinnati & St. Louis railroad and not using the Cincinnati & Muskingum Valley even for local traffic which could be diverted to their own lines or other lines owned by the Pennsylvania R. R. Com-
139 pany." This seems to state the amount of shares taken by you and your friends differently from your previous answer. Please explain this discrepancy.

A. There is a difference of 41 shares. Those 41 shares were taken by four persons, and we acted in their names and took the shares for them. The money advanced by us is the one I mentioned, but the aggregate amount included these 41 shares which I didn't put down.

Q. 141. Do you mean that you forgot it in writing the letter?

A. Yes; I omitted these four persons.

Cross-examined by Mr. ESTEP:

Cr. Q. 142. You state, Mr. Moran, that Thomas L. Jewett bought in this road for himself and others at judicial sale. Do you recollect what price it was bid in at?

A. I can't tell you the exact price; I can find out by looking over or maybe approximate it.

Cr. Q. 143. Can you not recollect that it was $1,004,000?

A. I can't remember the amount. I sold it, but I don't remember the amount.

Cr. Q. 144. How many of these first-mortgage bonds do you and your friends now hold?

A. That I can't tell you; about a half a million, I believe, but I don't know. I must look.

Cr. Q. 145. How long have you been identified with the Muskingum Valley road under its different names—interested in it as a bondholder or a stockholder?

A. I never was interested in any way except as a bondholder of the old company.

Cr. Q. 146. You state that those bonds were renewed or continued in the new organization?

A. No; there were other bonds issued in their places to the same extent or for the same amount; that was the idea. Not in their places. They were annulled by the sale, of course.

Cr. Q. 147. What I wish to know is whether you and your friends were interested in the bonds previous to this new organization?

A. Yes, sir.

140 Cr. Q. 148. About to what extent were you interested in the $1,300,000 bonds?

A. That I can't remember.

Cr. Q. 149. Can you tell anywhere near it?

A. No, I cannot; a great many of these bonds we hold we acquired afterwards.

Cr. Q. 150. I now refer to the number and amount of bonds that you had in the $1,300,000 that existed previous to this new organization.

A. I will give you the exact amount if you desire it; I cannot from memory; I never charge my memory with those things.

By Mr. HOADLY:

Cr. Q. 151. When you say a great many of these bonds were acquired afterwards you mean after the reorganization?

A. Yes, sir; you know we took a considerable share—about 200 bonds.

By Mr. ESTEP:

Cr. Q. 152. You say you were interested in the $1,300,000; can you tell about how far back your interest commenced?

A. We were interested from the commencement.

Cr. Q. 153. Of the road?

A. Of the road—that is, we bought and sold bonds for our friends. We had nothing to do with the reorganization of the company.

Cr. Q. 154. Before the sale of this road to Jewett, to which you have referred, did the road pay the interest on these bonds?

A. It did for a considerable time.

Cr. Q. 155. What number of years and for what years; can you give any year that it paid the interest?

A. I would have to look it up; of course they paid from the commencement for a considerable while or they couldn't have negotiated their bonds; the bonds couldn't be negotiated if they didn't pay. All those things I can hunt up, but you know just as well as I do.

Cr. Q. 156. The mortgage was foreclosed and the road sold because the interest wasn't paid?

A. Yes, sir.

141 Cr. Q. 157. In 1870?

A. Yes, sir.

Cr. Q. 158. You speak of having paid par for the stock of this new organization. Do you mean since 1870?

A. Certainly.

Mr. HOADLY: That is the stock that was issued to build the Dresden Branch.

Mr. ESTEP: Do you understand that, Mr. Moran?

The WITNESS: Certainly. That is the reason I stated the small amount.

Cr. Q. 159. Do you recollect about when this road from Morrow to Zanesville was organized in the first place?

A. I can't tell you.

Cr. Q. 160. Was it in 1851?

A. Very possibly.

Cr. Q. 161. Was this road not sold out in 1863?

A. There was a previous sale to the 1871 sale. I think you are right. It may be about 1863.

Cr. Q. 162. Was it not sold at that time—in 1863?

A. I think so; but I am not positive, because we were connected with the reorganization somehow or other.

Cr. Q. 163. You were a trustee then, were you, for the bondholders—one of the trustees?

A. No, sir; I may have been in the reorganization.

By Mr. HOADLY:

Cr. Q. 164. That is, between 1863 and 1871?

A. Yes, sir. I was not in the original; at least my memory may be at fault there, but I think not.

By Mr. ESTEP:

Cr. Q. 165. Do you now recollect, Mr. Moran, whether you were not a trustee from the beginning?

A. I can't tell. I think it is very possible I was. I can find out. It is of no importance. You know whether I was or not better than I do. I don't deny being so if I was, of course.

Cr. Q. 166. Do you not recollect that this road was put to sale and the mortgage foreclosed probably in 1857, and finally put to sale for the reason that it couldn't pay the interest on the bonds?

142 A. Yes, sir; they didn't pay and that was the reason it was foreclosed.

Cr. Q. 167. Do you recollect that a deed of this road conveying the franchises and properties of the Cincinnati, Wilmington and Zanesville Railroad Company was made to you by David Hull, receiver, to March 12, 1864?

A. You are probably right, but I am a pretty busy man, and I generally try to recollect principals and things, but details I never load my mind with. I have to refer every time you want details and dates. I have no memory for details at all.

Cr. Q. 168. Well, there was no change, as I understand you, in the amount of these bonds until after this last organization, when $200,000 more were added for the purpose of completing the road to Dresden?

A. Yes, sir.

Cross-examined by Mr. BROOKS:

Cr. Q. 169. You are personally acquainted with Mr. Evan J. Henry?

A. Yes, sir.

Cr. Q. 170. How long have you known him?

A. Since the organization.

Cr. Q. 171. In what year?

A. 1870; that brought me in contact with him.

Cr. Q. 172. For the first time?

A. Yes, sir; I have no recollection of ever seeing him before.

Cr. Q. 173. What conversations, if any, have you had with Mr. Henry within the last twelve months in regard to a suit having

been begun to cancel the lease of the Muskingum Valley Company to the Cincinnati and St. Louis Railroad Company; and, if you had such conversation, about when did it take place?

A. I can't tell you when it took place, but I have had conversation with him as a holder of the bonds and kept him informed.

Cr. Q. 174. State, as nearly as you can, when your first conversation with him happened.

143 A. I couldn't say, because I can't remember dates.

Cr. Q. 175. When did you first hear that a suit had been begun to cancel the lease?

A. The first I heard was on the 30th day of June that an injunction had been granted to prevent the payment of the coupons of the first-mortgage bonds due the next day—the first of July.

Cr. Q. 176. Now, how soon after that did you have a talk with Mr. Henry?

A. I don't know.

Cr. Q. 177. About how soon?

A. I can't tell you; it is impossible. I don't remember, but he, of course, had always gone with us, and he used to come in.

Cr. Q. 178. How often was he in?

A. Very often.

Cr. Q. 179. He used to come in about the time for paying the coupons?

A. Yes, sir.

Cr. Q. 180. The probabilities, then, are that he came in shortly after the 1st of July, 1885?

A. Yes, sir.

Cr. Q. 181. And if he did come in you had a conversation with him, probably?

A. Yes, sir; but I knew nothing of the proceedings except the injunction.

Cr. Q. 182. Do you recollect receiving a letter from Mr. Messler, president of the Muskingum Valley Company, advising you that a suit had been begun, and asking you to contribute?

A. Yes, sir.

Cr. Q. 183. Do you recollect what answer you made to that letter?

A. I have the letter; I can give you a copy.

(These two questions are objected to by plaintiff's counsel as to substance.

The witness identifies the paper marked Exhibit A as a correct copy of a letter received by himself from Mr. Messler, presi-

144 dent of the Cincinnati and Muskingum Valley Railway Company, dated February 25, 1885.)

Cr. Q. 184. Did you, in answer to Mr. Messler's letter of July 25th, reply under date of August 7, 1885, saying:

"We duly received your favor of 25th July last in regard to the employment of counsel in the matter of the first-mortgage bonds of your company, the coupons of which, due 1st July last, were not paid by the Pittsburgh, Cincinnati and St. Louis railway in accordance

with the stipulations in the lease. We shall take the matter into consideration, and, after consulting with our counsel, will communicate further with you in regard to this matter.

Very respectfully yours, MORAN BROTHERS."

A. Yes, sir.

Cr. Q. 185. I understand you to say that you wrote that letter to Mr. Messler?

A. Yes, sir; that is my handwriting.

Cr. Q. 186. Now, Mr. Moran, please state whether you ever offered to or did contribute anything toward the suit of Samuel Jeanes and others in pursuance to the request of the president of that company.

A. No, sir; I did not.

Cr. Q. 187. Please state what, if anything, you ever said to Mr. E. J. Henry in respect to the propriety of him causing a suit to be begun in his name or employing counsel to appear in the suit of Jeanes and others against the Cincinnati and Muskingum Valley Railway Company and the P., C. & St. L. Railway Company.

A. I can't tell you when, nor I don't know what, but I have spoken to him on the suject. It was a mere oral conversation.

Cr. Q. 188. Did you or did you not suggest to him the propriety of having such a suit begun?

A. I very possibly did; yes, sir. I very probably did. I don't remember what I said to him.

Cr. Q. 189. In your examination-in-chief you spoke of having taken part in the negotiations which resulted in the lease of the Muskingum Valley road to the Pittsburgh, Cincinnati and St. Louis Railway Company, as trustee of the bonds of the former company.

145

A. Of the former company.

Cr. Q. 190. And as trustee of the bonds of the Muskingum Valley Company?

A. Yes.

Cr. Q. 191. Can you point to the clause in the mortgage of that company constituting you its trustee which made it your duty or your business as such trustee to enter into any such negotiations?

A. I must confess I don't understand the bearing of the question.

Cr. Q. 192. It is this: You said in your examination-in-chief that as trustee of the bondholders you took part in those negotiations which resulted in the lease.

A. I think you haven't got in your mind, clearly, my reply. The question was put to me, and then I wanted to bring forward, which I think I did, that in this thing it wasn't as a director of the Cincinnati and Muskingum Valley that I acted, but as a trustee of the bonds held by parties interested in the railroad.

Mr. HOADLY: Mr. Brooks wants to know what clause of the mortgage you rely on to justify you in stepping forward.

The WITNESS: As a trustee, it was my duty to protect the bonds by every means in my power.

Cr. Q. 193. Was there at that time a default in the payment of interest due upon the bonds?

A. At what time?

Cr. Q. 194. In 1872 when the lease was negotiated?

A. No.

Cr. Q. 195. All this correspondence relating to the lease was from May, 1872, down to December?

A. That was only anticipating trouble. I wanted it so guarded that there could be no trouble.

Cr. Q. 196. I will repeat the question: At the time the negotiations were pending and the correspondence passed between
146 yourself and Col. Scott and others relative to a lease of the Muskingum Valley railroad to the P., C. & St. L. railroad was the interest on the Muskingum Valley bonds in default?

A. No, sir.

Cr. Q. 197. What provision in the mortgage, therefore, creating you a trustee called upon you as such trustee to protect the bonds of that company by taking part in these negotiations?

A. I don't know that there is any special provision; I haven't read the mortgage for a good while.

Cr. Q. 198. Is it not the fact, then, that the part you took in these matters was based upon and influenced by the large interest which you had in the Muskingum Valley Company both as a stockholder and as a bondholder?

A. Yes, sir.

Redirect by Mr. HOADLY:

Q. 199. Look at the circular now shown you, headed "We offer for sale, at ninety (90) and accrued interest, $800,000 of the first-mortgage seven per cent. bonds of the Cincinnati and Muskingum Valley Railway Company," signed "E. W. Clark & Co." and "Clark, Dodge & Co."; have the notary identify it by the date and his initials, and state from whom you received the circular.

(Objected to.)

A. I received it from one of the holders of the bonds.

Q. 200. Won't you state the name of the holder you received it from?

A. I have forgotten the name; I can find it by going to the office.

Q. 201. Do you know to what extent E. W. Clark & Company's circular was circulated?

(Objected to.)

A. I do not.

Q. 202. Please state the amount of first-mortgage bonds of the Muskingum Valley Railroad Company held by Moran Brothers.

A. At present?

Q. 203. Yes, sir; you can refresh your memory by looking at your letter to me.

147 A. $446,000.

Q. 304. What amount of shares?

A. 28,500.

Q. 205. What amount of bonds and stock are held by Evan J. Henry?

A. $10,000 bonds and 596 shares.

Q. 206. What is the holding of Daniel Comyn Moran, who is, I suppose, your son?

A. My son and partner. That is an individual holding of his own.

Q. 207. What is the holding of Daniel Comyn Moran in shares and bonds?

A. He has $2,000 bonds and 147 shares.

Q. 208. Will you please state the amount of bonds held in the Cincinnati and Muskingum Valley Railroad Company by the Pennsylvania Company?

A. $752,000.

Q. 209. Will you please state the number of bonds held by parties other than yourself, your firm, Daniel Comyn Moran, and Evan J. Henry, who are co-operating with you, and for whom you are authorized to act in resisting the cancellation of the lease.

A. Moran Brothers for themselves and their friends?

Q. 210. Yes.

A. Other than those there are $238,000.

Q. 211. Mr. Moran, in stating this $238,000 have you not omitted $5,000 held by Conrad Hirschmann, who is also the holder of 208 shares?

A. Yes, sir.

Q. 212. But they are to be added?

A. Yes, sir; this is the aggregate of all the parties that Moran Brothers acted for on the 10th of December, $701,000.

Q. 213. $701,000 was, on the 10th of December, the aggregate of all the bonds which had united in resisting the cancellation of the lease?

A. Yes, sir.

Q. 214. In the $238,000 are $64,000 of which you are the representatives in other senses than as combining in this lawsuit?

148 A. Yes, sir; considerable amounts held by my sister-in-law.

Q. 215. If I understand it correctly, there were, upon the organization of the Cincinnati and Muskingum Valley Railway Company, 1,300 first-mortgage bonds issued, each for $1,000?

A. Yes, sir.

Q. 216. Was that amount in excess or not of the amount of mortgage debt and interest then due and accrued upon the old first mortgage of the company, which had been sold out in foreclosure and bought in by Thomas L. Jewett?

A. It was only for the principal of the bonds, with no interest counted in, for the interest was the shares; we sacrificed all of the interest and everything, and got the same amount at par from the others.

Q. 217. Then there were 1,300 bonds in the old company?

A. Yes, and 200 new bonds.

Q. 218. And 200 new bonds issued to assist in providing the money for the extension to Dresden, and the equipment?

A. Yes, sir; they made the same *pro rata* in the new extension that there was on the old—$10,000 a mile.

Q. 219. What is the distance from Dresden to Zanesville and from Zanesville to Morrow?

A. I don't know; about 130 miles, I suppose, because it was $10,000 a mile.

Adjourned to Saturday, March 6, 1886, at 11 o'clock a. m.

NEW YORK, *March* 6, 1886.

Met pursuant to adjournment.

Present: Counsel as before.

Continuation of the redirect examination of CHARLES MORAN by Mr. HOADLY:

Q. 220. Please look at the letter now shown you and attach
149 it to your deposition, marking it Exhibit 81; it purports to be an original letter from G. B. Roberts, fourth vice-president Pennsylvania Railroad Company, per G., to yourself, dated December 2, 1871, enclosing another letter, which I also submit to you, to be covered by the same number, 81, purporting to be a copy of a letter from H. J. Jewett, president Cincinnati and Muskingum Valley Railway, to G. B. Roberts, Esq., fourth vice-president, dated Columbus, Ohio, November 29, 1871; please state whether the letter of Mr. Roberts is a genuine original received by you about or soon after its date, and whether the other paper was enclosed in it and conveyed in it to you.

A. Yes, sir.

Q. 221. Refreshing your memory by reference to these letters, will you please state, as nearly as you can recollect, about what the total cost of the extension from Zanesville to Dresden was?

A. I know nothing, except their report to me, you know; and here Mr. Jewett says in his letter to Roberts that it amounted to $538,910.

Q. 222. Look at the document now handed you and attach it to your deposition, marking it Exhibit 82, and state what it is.

A. It is the first annual report to the stockholders of the Cincinnati and Muskingum Valley railway, dated June 13, 1871.

Q. 223. Look at the document now shown you and attach it to your deposition, marking it Exhibit 83, and state what it is.

A. That is the second annual report of the same company, dated Zanesville, June 11, 1872.

Q. 224. Look at the letter and paper now shown you and attach them to your deposition, marking them Exhibit 84. The letter purports to be an original letter from J. A. Lippincott, secretary and treasurer of the Cincinnati and Muskingum Valley Railway Company, dated June 30, 1874, with an account enclosed, which is a statement of the earnings and expenses of the Cincinnati and Muskingum Valley Railway Company for the year ending March 31,

1873; the letter is addressed to yourself; please state
150 whether this is a genuine original letter, received from Mr. Lippincott, about or soon after its date, and whether the account which is now attached to it was enclosed in it.

A. Yes, sir.

Q. 225. The account was enclosed in it?

A. Yes, sir.

Q. 226. Please state what railroad line, if any, the Cincinnati and Muskingum Valley railway connects with at its western terminus, Morrow.

A. With the Little Miami railroad.

Q. 227. Please state what railway line the Muskingum Valley railway connects with at its eastern terminus, Dresden.

A. With the Pittsburgh, Cincinnati and St. Louis.

Q. 228. Between Dresden and Morrow how many lines of railway are there now and were there at the time of the making of the lease of the Muskingum Valley?

A. I must confess I can't say.

Q. 229. Is there a railway from Cincinnati to Pittsburgh through Morrow, Columbus, and Dresden; and, if so, by whom was it owned and controlled at the time of the making of the lease of the Muskingum Valley railroad?

A. Between where?

Q. 230. Cincinnati, Morrow, Columbus, Dresden, to Pittsburgh.

A. Yes; that is controlled by the Pittsburgh, Cincinnati and St. Louis railroad through the lease of the Little Miami and the Columbus and Xenia.

Q. 231. The Little Miami and Columbus and Xenia railroads, from Cincinnati to Columbus through Morrow and Xenia, had they already been leased to and were they in the possession of the Pittsburgh, Cincinnati and St. Louis Company at the time of the making of the lease of the Muskingum Valley railway?

A. For many years, I believe.

Q. 232. Previously, anyhow?

A. Yes, sir.

Q. 233. What is the western terminal point of the Pittsburgh,
151 Cincinnati and St. Louis railway and what was it at the time of the making of the lease of the Muskingum Valley railroad?

A. At Dresden.

Q. 234. The Pittsburgh, Cincinnati and St. Louis—the western terminal point.

A. Where was it?

Q. 235. Where was the western terminus of the Pittsburgh, Cincinnati and St. Louis railway at the time of the making of the Muskingum Valley lease? That is really the question.

A. Do you mean the road they controlled and everything?

Q. 236. I mean everything—the legitimate chartered line.

A. I believe it is Columbus. I am not positive; they had so many leases and partial ownership of roads.

Q. 237. Yesterday you were uncertain from whom you received the

circular of E. W. Clark & Co. and Clark, Dodge & Co. If you have refreshed your memory please state from whom you received it.

A. Mr. Hildeburn, of Wilmington, Delaware.

Q. 238. Is he a holder of bonds of the Muskingum Valley road?

A. Yes, sir.

Q. 239. Look at the paper now shown you, purporting to be a copy of the telegram from Thomas A. Scott to yourself, dated Philadelphia, June 7th, and state whether it is a true copy of a telegram received by you from Col. Scott on the date it bears date, and in what year it was received, if you know.

A. I couldn't say positively because it is not there. It is, I find, in an envelope with my handwriting on the envelope.

Q. 240. What is written on the envelope?

A. Telegram "Charles Moran, 23 Nassau street, New York," and I wrote on this "Thomas A. Scott, C. &. M. railroad, 7th June." The year isn't there. That is inside. It was done by myself at the time undoubtedly. Why it should be in that way I can't say.

152 Q. 241. Is that a true copy of the message you received on that day?

A. It must be; yes, sir.

Q. 242. Look at the letter now handed you and printed circular and mark it Exhibit 86 and attach it to your deposition. It purports to be a letter from F. G. Darlington, secretary Cincinnati and Muskingum Valley railway, dated January 25, 1886, to you, with the printed circular dated December 30, 1885, and signed Thomas D. Messler, president. Please state whether this is a genuine letter received about or soon after the date it is dated and whether it enclosed this circular now attached to it.

A. Yes, sir.

Q. 243. Look at the paper now shown you, attach it to your deposition, and mark it Exhibit 87, purporting to be an original letter from Thomas D. Messler, president, to you, dated December 20, 1876. Please state whether it is a genuine original received by you from Mr. Messler about or soon after the date of its date.

A. Yes, sir.

Q. 244. Look at the paper now shown you, marked Exhibit 88, and state whether it is or not a copy of the deed of further assurance which is referred to in your correspondence with Mr. Messler in the year 1877, of which a copy is stated in one of your letters to be enclosed to him.

A. Yes, sir.

Q. 245. In Exhibit 42, your letter of January 6, 1873, to Churchill and Fillmore, you say: "On Saturday I received a telegram from Mr. Scott asking me to decide in regard to the terms of the lease," etc. In Exhibit 65, your letter to Thomas A. Scott of the same date, January 6, 1873, you say: "I only received your telegram of Saturday late at night—too late to answer on that day." Please state whether you are in possession of Mr. Scott's telegram referred to in these letters or not.

A. We have repeatedly looked for it and have not been able to find it.

Q. 246. Have you made thorough search for it?

A. Thorough; yes, sir.

153 Q. 247. Have you any recollection of its contents other than stated in these two letters?

A. No, sir; I think it was only to call a meeting or something, but I can't say from recollection at all other than as the letter indicates.

Q. 248. Is Mr. F. C. Lawrence, Jr., of this city, a holder of bonds of the Muskingum Valley road; and, if so, to what amount?

A. Mr. Lawrence holds fifteen bonds.

Q. 249. How many bonds is Mr. Hildeburn, of Wilmington, the holder of?

A. Forty-four.

Q. 250. Have the coupons due upon the bonds of the Cincinnati and Muskingum Valley railway, secured by the mortgage to J. Edgar Thompson and yourself, which matured on the 1st of January, 1886, been paid or not?

A. No, sir.

Q. 251. Has any effort been made to pay them?

A. No, sir.

Q. 252. Look at the paper now shown you, which will be identified by the initials of the notary and the date of this day, and state whether it is or not the original mortgage of the Cincinnati and Muskingum Valley Railway Company to J. Edgar Thompson and yourself.

A. Yes, sir.

Recross by Mr. BROOKS:

Cr. Q. 253. Have you received the interest due July 1, 1885, on the Cincinnati and Muskingum Valley bonds?

A. No, sir.

Cr. Q. 254. Do you know whether the Pittsburgh, Cincinnati and St. Louis Railroad Company, obeying the order of court of Jefferson county common pleas, Ohio, has advanced the money wherewith to pay the interest due July 1 on those bonds?

A. All I know is they announced the bondholders could get the coupons paid at Winslow, Lanier & Co. We asked if they would pay interest up to the time of the payment and they said they would not. I believe we asked them whether they would

154 pay up to the 5th of January when they advertised and I believe they said not.

Cr. Q. 255. Some reference was made in your testimony yesterday to either yourself or your house acting as financial agents of the Cincinnati and Muskingum Valley Railway Company.

A. We acted in no way except that all the coupons have been paid at our office which have been paid; they always remitted us the amount and we paid the coupons and then returned the coupons to them.

Cr. Q. 256. But your house was never agent or the financial agent of the Muskingum Valley railway?

A. No; it was a thing that went through as a routine without any

bargain; they never paid us anything, which they ought to have done.

Adjourned to 3 p. m.

After Recess.

Redirect examination of CHARLES MORAN by Mr. HOADLY:

Q. 257. Please state whether a search has been made, under your directions, for a supposed telegraphic dispatch from Thomas A. Scott to yourself, dated October 17, 1872. And, if so, with what results?

A. I haven't been able to find it.

Q. 258. The search has been made?

A. Yes, sir; repeatedly.

Q. 259. In answer to question 4, on your examination-in-chief, you say: "Moran Brothers at the original reorganization held 688 shares." Isn't this the number of shares Moran Brothers individually took in the extension to Dresden and not at the original reorganization?

A. Yes, sir; I had only the memorandum at the time of the extension shares to refer to.

Q. 260. In answer to question 47 you spoke of meeting Col. Scott in a railroad car. This is in answer to a question which asked you whether you met him in Pittsburgh. Will you please state between what points the car was traveling in which you met him?

155 A. I met him in his private car in Philadelphia, and went, I believe, as far as Harrisburg with him and then returned home.

Q. 261. In answer to question 15, in speaking of the bonds acquired after the reorganization, you are reported as follows: "Yes, sir; you know we took a considerable share—about 200 bonds." If there is any error in this please correct it and state what the fact is.

A. I intended to say we took a portion of the 200 bonds issued for finishing the part from Zanesville to Dresden; 200 bonds was the whole amount issued for the extension, of which we took a considerable part.

Q. 262. In answer to question 216, which asked whether the 1,300 first-mortgage bonds first issued by the Cincinnati and Muskingum Valley Railroad Company were in excess or not of the mortgage debt and interest due and accrued on old first mortgage of the prior company, you are reported as answering: "It was only for the principal of the bonds, with no interest counted in, for the interest was the shares. We sacrificed all the interest and everything and got the same amount at par from the others." Do I not understand that the real transaction was this: The principal of the bonds in the new company—that is, the Cincinnati and Muskingum Valley Railway Company—was the same as in the old company, the Cincinnati and Zanesville Railroad Company—that is, 1,300 first-mortgage bonds issued by both companies. In reorganizing or creating the Cincinnati and Muskingum Valley Railway Company you gave up the accrued interest on the old 1,300 bonds, receiving for it no other

consideration than the shares in the new company, and for those shares you paid no other consideration except the transfer of the railroad purchased by yourself and others in the name of Thomas L. Jewett to the Cincinnati and Muskingum Valley Railway Company for 1,300 new first-mortgage bonds and for shares?

A. Yes, sir.

CHAS. MORAN.

156 (EXHIBIT 82.)

First Annual Report of the President and Directors to the Stockholders of the Cincinnati and Muskingum Valley Railway Company.

ZANESVILLE, *June 13th*, 1871.

To the stockholders of the Cincinnati & Muskingum Valley Railway Company:

As directed by you at your meeting held for the organization of this company and at which the organization was perfected, your board of directors purchased the road between Zanesville and Morrow, then known as the Cincinnati and Zanesville railroad, agreeing to pay therefor thirteen hundred thousand dollars in the mortgage bonds of the company at par and thirty-six hundred thousand in the stock of the company, and provided for the construction of the road between Zanesville and Dresden by putting the same under contract and making such other arrangements as were needed to that end.

As directed, also a deed of trust to secure fifteen hundred thousand dollars in bonds of one thousand dollars each upon the road so purchased and to be constructed was duly executed and the bonds issued, thirteen hundred thousand of which were used in making such purchase and the remaining two hundred thousand retained to aid in the construction and equipment of the Dresden Extension.

The Cincinnati and Zanesville road had been purchased by T. L. Jewett for the benefit of the holders of the mortgage bonds thereon at a judicial sale thereof, and the same was operated in his name from the date of said purchase, December, 1869, until he delivered the possession thereof to this company in pursuance of the terms of purchase, which delivery of possession took effect on the first day of September, 1870, and with which he also transferred to this company all the property, contracts, and earnings acquired, made, and realized between the date of said judicial sale and purchase and the date of such delivery of the possession to this company.

157 For such period the earnings and expenses of the road were:

Earnings	$228,086 04
Expenses	183,014 67
Net earnings	$45,071 37

From the first day of September, 1870, when this company took

possession of the road, to the first day of April, 1871, the period up to which its accounts are now stated, the earnings and expenses of the road were as follows:

Earnings	$239,352 63
Expenses	196,565 11
Net earnings	$42,787 52

making, in the whole, a net earning of $87,858.89, applicable to the interests on the bonds of this company and such other general purposes as may advance the general interests of the company.

At the time of taking possession of the road in the name of the purchaser, T. L. Jewett, and to the present time, to protect the property from permanent decay, it has been found necessary to rebuild and thoroughly repair many of the engines and cars and many of the structures on the line of the road.

Of the sixteen engines belonging to the company twelve have been thoroughly overhauled, receiving new furnaces, etc., and two are now in the shop for thorough repair. Of the passenger cars five have been rebuilt and two changed to baggage cars. The car equipment of all kinds has been very thoroughly overhauled and repaired.

There has been purchased and put on the road one hundred and twenty-five new coal cars.

Bridges Nos. 1, 2, 3, 4, 5, 6, and 7 have been covered and roofed complete. Bridges Nos. 8, 9, 19, 22, and 37 have been rebuilt, and bridge No. 44, over the Muskingum river, has been strengthened by wooden arches of four spans of one hundred and fifty feet each.

The roadway has been much improved. Five miles of new rail and seven and a half of repaired have been put in the track during the present summer. Twenty-five thousand new ties have been put in the road and some portions of the road thoroughly ballasted.

By pursuing the policy which has been observed since this company has had charge of the road it will soon be brought up to a first-class standard.

The construction of the Dresden Extension has been prosecuted with all reasonable diligence. The greater part of the road-bed is now in condition for the superstructure, and if it were not for the heavy work on sections seven and eight the road might, in a very short time, be brought into active service, unless some unforeseen obstruction presents itself. We, however, have no doubt of the entire completion of the road early in the month of September next.

The management of the road in all its departments since your company became the owners of the property has, in the opinion of the board, been attended with success, and those in charge of the different departments of the service deserve, as they receive, favorable mention.

By order of the board.

H. J. JEWETT, *President.*

(EXHIBIT 75.)

PHILADELPHIA, *September* 12, 1871.

Charles Moran, Esq., New York.

DEAR SIR. We have on hand $807,000 of the 1st-mortgage 7 per cent. bonds of the Cincinnati and Muskingum Valley R'y Co., which we are prepared to dispose of on a suitable offer. Could you name a price for them?

Yours truly, EDMUND SMITH,
3d Vice-Pres't.

(EXHIBIT 16.)

NEW YORK, *Sept.* 13, 1871.

Edmund Smith, Esq., 3d vice-pres't Pennsylvania railroad, Philadelphia.

DEAR SIR: Your favor of yesterday is at hand, inquiring whether I am willing to make you an offer for the $807,000 Cin'ti and Mus. Val. R'y 1st-mortgage bonds, which your com-
159 pany holds and desires to sell. The European demand for good railway bonds at the present moment is such that we could easily place these bonds were it not that the past embarrassments of the companies which heretofore successively owed that road has thrown discredit upon the enterprise which nothing can remove except several years' revenue sufficient to meet all expenditures and a surplus beyond the interest on the bonds of the company. If, however, your company can and will legally guarantee the payment of the principal and interest of these bonds I think it very possible that we could dispose of them at a fair price through our friends in Europe. This guarantee seems to us especially proper and safe for your company, because by its control of the Western and Eastern traffic it can either direct to or divert from the Cin'ti and Mus. Val. R'y whatever portion of that traffic your company may deem proper, and thus insure earnings amply sufficient not only to make the bonds but even the shares of Cin'ti and Mus. Val. railroad undoubted investments, having a satisfactory current market value.

Believe me, very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 17.)

PHILADELPHIA, *September* 18, 1871.

Chas. Moran, Esq., 23 Nassau St., N. Y.

DEAR SIR: Your favor of the 13th inst. was duly received. I note what you say about the endorsement by the Penna. R. R. Co. of the Cincinnati and Muskingum Valley Railway Company 1st-mortgage bonds. I am informed by the president of that company that the net earnings of the line are now amply sufficient to meet

the interest upon its mortgage debt. They will no doubt be largely increased upon the opening of the line from Zanesville to Dresden. The Penna. R. R. Co. is not prepared to make the endorsement upon these bonds as you suggest, but prefer that they should rest upon their own merits. At the suggestion of Thos. L. Jewett, purchaser,

I enclose herewith a certificate (No. 85) in your name for 26,555
160 shares of the capital stock of the Cincinnati and Muskingum Valley Railway Co.; also a statement showing the distribution of the capital stock. Be good enough to enclose a receipt for the same.

I have also a certificate for 550 shares in the name of E. J. Henry. Shall I forward it to you or hold it subject to his order? Trusting you will find it in satisfactory shape,

Yours truly, EDMUND SMITH,
3d Vice-Pres't.

(EXHIBIT 51.)

$1,500,000.

The First-Mortgage Seven Per Cent. Bonds of the Cincinnati and Muskingum Valley Railway Company of Ohio.

These bonds are secured by a first mortgage upon a railway extending from the line of the Pittsburgh, Cincinnati and St. Louis railway, near Dresden, through Zanesville, Lancaster, and Wilmington, Ohio, to Morrow, on the line of the Little Miami railroad (36 miles northeast of Cincinnati), a distance of 148 miles.

A majority of the stock of this company is owned by the Pennsylvania Railroad Company.

That portion of the line between Zanesville and Morrow, 132 miles, passing through one of the best agricultural regions of Ohio, has been in use a number of years and its local traffic already developed, but, in consequence of having no eastern outlet, it has not reached that magnitude which its connection with the Pennsylvania railroad lines, by its extension to the Pittsburgh, Cincinnati and St. Louis line, a distance of 16 miles, will give to it.

Since the road has belonged to its present owners its earnings, exclusively local, have been sufficient for its maintenance and improvement and to meet the interest upon the issue of bonds due to that portion of the line in use.

That portion of the road between Zanesville and Dresden, connecting the present road with the Pittsburgh, Cincinnati and St. Louis railway, is substantially completed. The tracks are connected, and by the 15th day of the present month will be in condition for active service.

161 The paid-up capital stock of the company is $4,000,000 and its mortgage indebtedness $1,500,000, which is but about $10,000 per mile.

In view of the productive character of the country traversed, the extensive but partially developed coal mines upon the line, and

the small extent of the mortgage upon the road I consider these securities equal to the best that have been placed upon the market.

HUGH J. JEWETT, *President.*

Zanesville, Ohio, October, 1871.

In view of the small amount per mile of the first mortgage upon the Cincinnati and Muskingum Valley railway and the fact that the present business of the line, without Eastern connections, has been more than sufficient to meet the interest upon its indebtedness I regard the bonds of that company as a perfectly safe security.

J. EDGAR THOMSON.

(EXHIBIT 81.)

PHILADELPHIA, *December* 2, 1871.

Chas. Moran, Esq.

DEAR SIR: I enclose you copy of a letter received from H. J. Jewett, president of Cincinnati and Muskingum Valley R. R. Company, which letter explains itself.

I am instructed by Mr. Thomson to say that our company are willing to take (either for themselves or on account of the interest held in the Cincinnati and Muskingum Valley R. R. Co. by the P., C. and St. L. R'y Co.), at the price suggested by President Jewett, viz., 85 per cent., their proportion of the $197,000 of bonds still remaining in the hands of the trustees, the proceeds to be applied to the payment of the debt already incurred for the construction of the road and the increase of equipment, as suggested in the said letter of President Jewett.

We understand that under the agreement made between yourself and Mr. Thos. L. Jewett to provide means for the extension of the road from Zanesville to Dresden and other purposes necessary to a full development of the business of the entire line our pro-
162 portion of the bonds to be taken would be $\frac{8}{13}$ths and that of yourself and associates $\frac{5}{13}$ths.

If this arrangement and price meet your approval I would be glad to hear from you at the earliest possible moment, that the matter may be closed up and the line placed in funds to liquidate its debt and otherwise provide for the increase of traffic.

Yours, G. B. ROBERTS,
4th Vice-Pres't.

G.

(EXHIBIT 81.)

COLUMBUS, O., *Nov.* 29, 1871.

G. B. Roberts, Esq., 4th vice-president.

DEAR SIR: We are substantially through with the construction, etc., of the Dresden Extension of this road. We may require between this and the 1st of January next some fifteen or twenty thousand dollars for station-houses, sidings, additional rights of way, etc. Our financial condition is about this:

We have incurred liabilities as follows:

For graduation and masonry	$206,795 58
For B. & O. track and right of way through Zanesville	30,000 00
For bridge superstructure over Muskingum river	21,371 00
For right of way on line	25,399 60
For all other purposes, such as ties, spikes, laying of track, &c.	66,344 71
For iron rail	113,000 00
For cars	76,000 00
Making an aggregate of	$538,910 89
Deduct amount of stock subscription	422,948 50
To be provided for	$115,962 39

There remains of the mortgage bonds in the hands of the trustee $197,000.

When we commenced this work I understood that for the purpose of completing the road, and, as far as could be, to equip it, the P. R. R. Co. and Mr. Moran and his associates would take new bonds in the proportions in which they were interested in the bonds of the old company, and the stock of the new at some agreed price. May I ask that you will at an early day consummate this arrange-
163 ment? If the bonds are taken, say at 85 per cent., it will produce to us, say, $167,450, which amount will enable us to liquidate all existing indebtedness and to add somewhat to our equipment, an addition which we very much need.

The earnings of the road are improving and can be permanently improved with an increase of facilities.

Not having immediate access to the books of the company, the foregoing statements may vary slightly from the approved accounts, but not substantially.

Very respectfully,

H. J. JEWETT,
Pres't Cin. and Mus. Valley R. R. Co.

(EXHIBIT 19.)

Lease and Contract.

An indenture of lease, made the — day of ——, anno Domini one thousand eight hundred and seventy-two (1872), between the Cincinnati and Muskingum Valley Railway Company, of the first part, and the Pittsburgh, Cincinnati and St. Louis Railway Company, of the second part.

Whereas the railways of the parties hereto connect directly each with the other and said parties hereto are desirous to enter into a lease and contract with each other in respect to the use, management, and working of the railway of the party of the first part:

Now, this indenture witnesseth that the party of the first part, for

and in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part to be paid, kept, and performed, have leased, demised, and to farm let, and by these presents do lease, demise, and to farm let, unto the party of the second part and they take the railway of the party of the first part now constructed and to be constructed and ready for use and operation and to become ready for use and operation from its point of connection with the railway of the party of the second part, at or near Dresden, in Muskingum county, Ohio, to its terminus, at Morrow, Warren county, Ohio—

164 Together with all the depots, stations, buildings, appurtenances, and property, real and personal, to said demised railway belonging and appertaining (as well that now owned as that hereafter to be acquired by the said party of the first part at and between the said before-mentioned points); to have and to hold the said demised property, real and personal, unto the party of the second part, their successors and assigns, to and for the full end and term of ninety-nine years from the — day of ——, A. D. 1872.

That in consideration of the premises the party of the first part hereby covenants and agrees that the party of the second part shall at all times during the term aforesaid have full and exclusive power, right, and authority to use, manage, and work the said railway of said party of the first part, and shall have the right to fix the tolls thereon (but not at a higher rate than is authorized by the charter of the party of the first part hereto); and, further, that said party of the second part shall have full, free, and exclusive right to charge and collect all of the said tolls on and freight charges and dues to accrue from said road during the said term, and to appropriate the same in the way and manner hereinafter mentioned, and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid and all other lawful powers and privileges which can or may be lawfully exercised and enjoyed on or about the said demised railway and property, as exclusively, fully, amply, and entirely as the same might or could have been used, exercised, and enjoyed by said party of the first part had this lease and contract not have been made, and as exclusively, fully, amply, and entirely as said party of the first part have authority by law to grant the same.

And in consideration of the premises the party of the second part hereby covenants to and with the said party of first part as follows, viz.:

First. That the party of the second part shall and will at all times during the hereby demised term work, use, and manage, maintain, operate, and keep in public use the railway of the party of the first part, with its appurtenances, from its point of connection with

165 the railway of the party of the second part at or near Dresden, Muskingum county, Ohio, to its termination at Morrow, Warren county, Ohio, as aforesaid, and will so work and efficiently operate the said railway and appurtenances between the said points, with all such locomotives, cars, and rolling stock owned and to be owned, controlled, or used by them, the party of the second part, as shall in the judgment of the party of the second

part reasonably be required for and properly adapted to promptly and fully accommodate the business thereof, and shall and will collect and receive all of the said tolls, freight charges, and dues which shall accrue as aforesaid, and apply and appropriate the same in the way and manner following, to wit:

First. To the payment of the annual cost of repairing, maintaining, and perpetuating for public use the railway and property and all the expenses of working, using, managing maintaining, and operating and running the same, including eight per centum (8%) per annum upon the cost of such engines as the party of the second part at its own expense may put on said roads and the usual charge for car service for cars actually used and employed thereon and not owned by said first party, premiums for insurance and all tolls, taxes, or assessments now or hereafter to be levied or assessed by the laws of the United States or of the State of Ohio upon the traffic passing over said road and the property of the said party of the first part now or hereafter acquired by the party of the second part by and under this lease, it being distinctly understood that certain work yet to be done and required to perfect and completely finish the said road hereby demised, as well as such additions and improvements thereto as the party to the second part shall determine to be necessary from time to time for the prompt and economical movement of the traffic on and over said road, shall be done by and at the expense of the said party of the first part.

Second. To pay the surplus, if any thereafter remains, to the treasurer of the party of the first part.

Second. That said party of the second part shall and will
166 at all times keep the buildings upon the lands hereby demised insured against loss by fire, paying the premiums therefor as aforesaid, and will keep said demised railway and property in good order and repair, and will, at the expiration of the hereby demised term or other sooner determination of this lease and contract, yield and deliver up the hereby demised railway and property and appurtenances in the same good order and repair that the same are now in or may be put in during the demised term, reasonable wear and tear excepted.

Third. That the party of the second part shall keep accurate accounts of all the business receipts and revenues arising from the said demised property, and their books relating thereto shall be subject to the examination of the president of the party of the first part or any agent duly authorized by them to examine the same; and the party of the second part shall furnish to the party of the first part monthly accounts of all the gross receipts and a semi-annual account of all the said business receipts, revenues, and expenses; and the said president or duly authorized agent of the party of the first part shall have the right at all times to travel without charge on the cars of the said party of the second part over the said demised railway for the purpose of ascertaining the business and management of the said railway and reporting thereon to the party of the first part.

Fourth. That if any difference shall arise in relation to this lease

and contract between the parties hereto each shall select a referee of experience and skill in railway management, and the said referees shall select another of like experience and skill, and the three so chosen shall hear and decide such differences, and their decision or that of a majority of them shall be final and conclusive upon the parties hereto.

In witness whereof the said parties to these presents have caused their respective common or corporate seals to be hereto affixed, attested by their respective presidents and secretaries.

Dated the day and year first hereinbefore written.

166½ (EXHIBIT 18.)

NEW YORK, *8th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: After perusing the proposed lease of the Cint. & Mus. Valley R. R. Co. I find it a mere conveyance of the road for a period of 99 years, without one single stipulation in favor of the C. & M. V. Co. or the stockholders. You surely did not intend that I and my friends should thus assent to the conveyance to others of our property without any stipulation in regard to our interests and without power to protect them in any emergency. Any just, proper, equitable lease I will gladly assent to. More you certainly cannot have intended.

Very truly yours,
(Signed) CH'S MORAN.

(EXHIBIT 20.)

PHILADELPHIA, *May* 9, 1872.

Chas. Moran, Esq're, New York.

MY DEAR SIR: I am in receipt of your favor of May 8th, referring to the lease of the Cincinnati and Muskingum Valley r'road.

Our sole purpose was to get that property into a shape where it could be worked on the most economical basis possible and be entirely within the control of its owners as to revenue.

The lease is made to cover every dollar of revenue received from its business beyond the actual current expenses, so that the bond and stock holders must realize everything that can be made out of it.

In doing this we supposed that we were doing the very best thing for our $\frac{8}{13}$ths of the property and, of course, putting your $\frac{5}{13}$ths on the same basis as our own investment.

If you can suggest any amendments or additions to the lease that will place your ownership in any better position than it is I shall be glad to have you do so, as we have but one object in view, and that is to get rid of a costly organization and to reduce the ex-
167–169 penses of operating the road to a minimum and at the same time be able to control for it, whenever necessary, such

equipment as will give to the line the greatest possible efficiency and earning for its owners.

Rest assured, my dear sir, that you shall always find us endeavoring to protect all that are interested with us in property of a like character. I may say that we have now in operation no less than seven lines of connecting roads in which our company is a large owner and of which the lease is an exact copy of this as to terms and conditions.

I have been confined to my house for about a week, but hope to be out in a few days, and would be glad at any time to confer with you on the subject, or, perhaps, to get at the matter more promptly, a statement from you in writing would be advisable.

Very truly yours, THOMAS A. SCOTT, *Pres't*,
Per G.

(EXHIBIT 21.)

NEW YORK, *9th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I wrote you yesterday a few hurried lines in regard to the contemplated lease of the Cin'ti & M. V. road, a scheme which took me entirely by surprise, as I never supposed anything of the kind could be prepared for execution without a word on the subject being said to me, both as a director of the company and as a representative of the large interest which Moran Brothers and their friends have in that company. Upon mature reflection I think I ought to call your attention to the fact that Moran Brothers and their friends joined your company in the purchase of the C., W. & Z. road as co-partners, and as such contributed in cash their full share of the outlay of constructing the junction to Dresden, and very recently purchased (at a full price more than they would have consented to pay for the bonds under the present condition of the road had they not looked upon it as one of their obligations as your copartners in the enterprise) their full share of the surplus first-mortgage bonds of the C. & M. V. Co. which were sold to liquidate the floating debt of the company and furnish the equipment necessary to its future traffic. Now, under such circumstances, do you think these interests should be sacrificed to the interests of your company? Is this at all necessary to the attainment of the object you have in view and for which you make the lease? If the sacrifice of the C. & M. V. be necessary at least the interests of Moran Brothers and their friends, who in good faith joined you as copartners and co-operated with you in all your views, should be protected. How this should be done could probably be easily settled in fifteen minutes' conversation. Can you spare that amount of your time and is it worth while to come on to see you for that purpose? This is a mere suggestion, as Moran Brothers and their friends would much rather retain their interest in the C. & M. V. road if that company's traffic be allowed to develop itself fairly without opposition from adverse interests and without sacrifice of any interest of your company.

Believe me, very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 22.)

NEW YORK, 11*th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: Your kind favor of 9th inst. came duly to hand and is precisely what I expected from you, for all my recollections of our old, pleasant intercourse during the railroad contests and negotiations between the great East and West lines had inspired me with unlimited confidence in your frankness and also in your prompt and clear perception of what is beneficial to the interests you represent and of what will follow from any given course of action. This led me to join with pleasure in the purchase of the C. & M. V. road and gave rise to a full faith that when joining my interests with those you represent they would be equally protected, or else you
171 would give me notice when this became inconsistent with your position. The assurances contained in yours of the 9th instant have removed every shadow of doubt or fear as to the object of the lease of the C. & M. V. road. The only thing now remaining to be done is to so arrange the lease that your successors may not be able to do by virtue of it what, I am sure, you have no intention of doing. Your answer to mine of yesterday will no doubt appoint some day and place when we can exchange views in regard to this; but I was not willing to defer any longer the expression of the gratification with which I have received the friendly assurances contained in yours of the 9th instant.

Believe me truly and sincerely yours,

(Signed) CH'S MORAN,
Per T. O.

(EXHIBIT 23.)

NEW YORK, 25*th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I had this pleasure on the 9th and 11th instants, and confess being a little disappointed at not receiving a few lines in reply, particularly as I perceive by the papers that you have been in our city, which offered an opportunity for a few minutes' interview.

Will you have the kindness to have forwarded me a copy of the proposed lease, after the receipt of which I may have occasion to write you again a few lines on the subject?

Very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 24.)

NEW YORK, 6*th June*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I duly received your favor of the 28th May, but as yet have not received the copy of the proposed lease of the C. & M.

V. railroad. They must have disregarded or overlooked your instructions to send me copy. Shall I have an opportunity to meet you between this and Saturday? If I go to Zanesville, as I
172 am somewhat inclined to do, I must leave Monday morning or, at latest, Monday evening.

Very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 46.)

PHILADELPHIA, *May* 28, 1872.

Charles Moran, Esq., New York.

MY DEAR SIR: I have your favor of May 25th, in reply to which I will say that I had hoped to be able to see you in New York, but it quite escaped my memory, and I came home without doing so.

The lease is at Pittsburgh, but I will telegraph there and have them send you a copy at once so that you may look it over.

I start to-night for St. Louis and will be absent about a week. On my return I hope to see you, and if there are any suggestions in connection with the lease that will render our mutual interests safer or protect them better I will endeavor to have it arranged.

Very truly yours, THOMAS A. SCOTT, *Pres't*,
Per G.

(EXHIBIT 25.)

NEW YORK, *7th June*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I wrote you a few lines yesterday and this morning received the copy of the proposed lease and contract of the Cin'ti & M. Valley Railroad Co. to the Pittsburgh, Cin'ti & St. Louis R'way Co. After perusing this document with care I again find not one single stipulation in it to protect the interests of the stockholders of the C. & M. V. Co. The lease is for 99 years, during which period of time the P., C. & St. Louis Comp'y are given the exclusive authority to use, manage, and work the road and fix the tolls thereon; not a single limit as to the rates. The rates over the C. & M. V. may be $\frac{1}{10}$th of the rates per mile charged by the P., C. & St. Louis Com'py, which,
172½ having the control of the rates between any two given points, may account to the C. & M. V. at $\frac{1}{10}$'h or even less of the rate per mile which they receive, putting the surplus per mile into their own treasury. The P., C. & St. Louis Co. are to work the C. & M. V. road with any number of locomotives, cars, and rolling stock they please, charging 8 per cent. interest on all the locomotives and the usual charge for car service for all the rolling stock they may place on the C. & M. V. road. This, of course, enables the P., C. & St. Louis Co. to force all the traffic between the E. and the W.

(EXHIBIT 22.)

NEW YORK, 11*th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: Your kind favor of 9th inst. came duly to hand and is precisely what I expected from you, for all my recollections of our old, pleasant intercourse during the railroad contests and negotiations between the great East and West lines had inspired me with unlimited confidence in your frankness and also in your prompt and clear perception of what is beneficial to the interests you represent and of what will follow from any given course of action. This led me to join with pleasure in the purchase of the C. & M. V. road and gave rise to a full faith that when joining my interests with those you represent they would be equally protected, or else you
171 would give me notice when this became inconsistent with your position. The assurances contained in yours of the 9th instant have removed every shadow of doubt or fear as to the object of the lease of the C. & M. V. road. The only thing now remaining to be done is to so arrange the lease that your successors may not be able to do by virtue of it what, I am sure, you have no intention of doing. Your answer to mine of yesterday will no doubt appoint some day and place when we can exchange views in regard to this; but I was not willing to defer any longer the expression of the gratification with which I have received the friendly assurances contained in yours of the 9th instant.

Believe me truly and sincerely yours,

(Signed) CH'S MORAN,
Per T. O.

(EXHIBIT 23.)

NEW YORK, 25*th May*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I had this pleasure on the 9th and 11th instants, and confess being a little disappointed at not receiving a few lines in reply, particularly as I perceive by the papers that you have been in our city, which offered an opportunity for a few minutes' interview.

Will you have the kindness to have forwarded me a copy of the proposed lease, after the receipt of which I may have occasion to write you again a few lines on the subject?

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to go over the Little Miami road, which they control and virtually own, and by their own road. The C. & M. V. road is thus put, entirely unprotected by any stipulation in the lease, in the hands of a Co. having an interest strongly adverse and antagonistic to that of the C. & M. V. road. Any one acquainted with human nature can readily foresee what the natural result of this must be. You certainly would not permit any road you owned to obtain its equipment on the terms proposed. The lease stipulates that all improvements which the P., C. & St. Louis Co. may deem necessary shall be made at the expense of the Cin'ti & M. V. R. Co. Out of what shall these improvements be paid for if they exceed the surplus earning of the C. & M. V. road, and out of what shall the interest on the first-mortgage bonds be paid? The P., C. & St. Louis Co. can so manage the C. & M. V. road as to render the foreclosure of the 1st mortgage inevitable and its sale produce little or nothing, and thus by it in a second time at even a lower price than that paid for it at the last foreclosure sale. The only money that will ever reach the treasury of the C. & M. V. Co. is the surplus, if any (so reads the lease, no doubt foreseeing the future), after all the claims of the P., C. & St. Louis Co. are deducted from the meagre receipts which the latter company will allow the C. & M. V. road to receive. The only stipulation upon the P., C. & St. Louis Co. is that it shall keep the buildings, railway, and property in its present condition, and thus return the whole to the C. & M. V. Co. at the termination of the lease, reasonable wear and tear excepted. Now,
173 if a road be constantly maintained in its original condition, what wear and tear can there be? And yet wear and tear is admitted and allowed; but—I suppose a contingency to arrive—99 years hence need not be provided against. The books of the traffic and expenditures of the C. & M. V. road are to be shown at all times to the president of the Cin'ti & M. V. R. Co. or to his duly appointed agent, and if any differences shall arise in regard to the interpretation of the lease or the traffic and accounts they shall be left to umpires appointed by both parties; but of what practical benefit to the stockholders of the C. & M. V. R. Co. can these stipulations be when the P., C. & St. Louis R. Co. owns a majority of the shares and hence appoints the president and directors of the C. & M. V. Co.? Now, surely you would never make such a lease of any property in which you were individually interested, nor can Moran Brothers and their friends consent to it, for it is simply an assignment of their property to other parties without compensation and without the slightest stipulation for the future protection of their interests. I must therefore ask you to have the meeting of the directors of the C. & M. V. Co, for the ratification of this lease postponed or else I shall be forced, much against my will, to take legal measures to prevent its execution or to break the lease after it is made. I think it is not the interest of your company any more than that of Moran Brothers and their friends to force this matter into the courts, and I think the whole matter can be amicably arranged to the satisfaction of all parties if I can have a moment's interview with you. Please telegraph to me early to-morrow morn-

ing whether you postpone the meeting for the ratification of the proposed lease or not.

Believe me very truly yours,

(Signed) CH'S MORAN,
Per T. O.

Since writing the above I have received your telegram of to-day. I will meet you in Pittsburgh Monday. I send this so that you may see the grounds upon which I dissent to the proposed lease.

174 (EXHIBIT 83.)

Second Annual Report of the Board of Directors to the Stockholders of the Cincinnati and Muskingum Valley Railway Company, Zanesville, June 11th, 1872.

To the stockholders:

Your board of directors respectfully submit the following report of the operations of this company for the fiscal year ending March 31st, 1872.

The earnings and expenses of the road during the past year were as follows:

Earnings.

From passengers	$124,867 39
freight	270,869 72
express and mail	29,967 40
miscellaneous sources	14,133 21
Total earnings	$439,837 72

Expenses.

To conducting transportation	$51,546 19	
locomotive repairs	106,340 95	
car repairs	25,931 61	
road repairs	82,164 48	
general expenses	14,577 21	
loss and damage	3,190 19	
		283,750 63
Net earnings		$156,087 09

The expense being equal to sixty-four $\frac{64}{100}$ per cent. of the gross earnings and showing a net profit from the operations of the road of $156,087.09, which has been disposed of as follows:

To payment of interest	$91,105 00	
payment of taxes	14,693 86	
payment old company's debts	8,750 00	
		114,548 86
Leaving an unexpended balance of		$41,538 23

175 When the company purchased the road of the Cincinnati and Zanesville Company, extending from Zanesville to Morrow, with the equipment and other property thereon and appertaining thereto, it had been in active service for about fifteen years.

While the usual and ordinary repairs had been made from time to time upon the bridges and other structures and much of the equipment, yet the materials were nearly worn out, and your board found it necessary, after a careful examination, to authorize a thorough renewal and repair of the structures and property aforesaid, and the work has been constantly going on. The amounts expended for such improvements having been charged in the current expenses of the company necessarily cause the percentage of expenses, as compared with the earnings, to appear larger than it otherwise would.

For a more detailed statement of the character and extent of the extra work you are referred to the accompanying report of the superintendent.

The earnings of the company have been derived almost wholly from the local business between Zanesville and Morrow.

The extension to Dresden was in condition for use in October last, but owing to the unusual pressure of business on the P., C. & St. L. railway this company was unable to avail itself of the anticipated advantages of this connection. It is with pleasure we state that such difficulties for the future are not to be expected.

The business on the line of the road is improving, and by securing to it all reasonable facilities you may with safety calculate on a large increase of traffic and passenger travel.

The extension of the road to the point of connection with the P., C. & St. L. railway near Dresden has been completed and is now in good working order. For the purpose of making this extension and adding to the equipment of the road two hundred of the fifteen hundred mortgage bonds were set apart in addition to the sub-
176 scription of capital stock of the company amounting to $622,960, and from which has been realized the following amounts:

From the proceeds of the bonds	$167,517 66
From the proceeds of stock subscriptions	422,960 00
	$590,477 66

Which amount has been disposed of as follows:

For graduation and masonry	$238,830 52
shops, depots, and stations	9,268 57
right of way	36,797 75
rails, chairs, and spikes	152,674 99
cross-ties	22,558 52
bridge superstructures	21,397 00
ballast	7,474 76
laying track	8,405 37
telegraph lines	511 90

For salaries and expenses	$10,197 26	
equipment	80,126 10	
account of cars	976 53	
		$589,219 27
Leaving a balance, derived from the sources named, of		$1,258 39

Two new engines have been ordered and are nearly ready for delivery on the road. One hundred and twenty-five new coal cars purchased the previous year have been paid for during the past year, but it will be necessary to further increase both the locomotive and car equipment.

We have on the road one hundred new box and fifty new stock cars. When these cars were contracted for the company was unable to purchase and pay for them. A contract therefore was made by which the party furnishing them retained the ownership, the company paying the ordinary mileage for their use and keeping them in repair, reserving the right to take them at any time at their cost price.

The following table will show the financial condition of the company:

177 Assets.

Roadway, rolling stock, and other property acquired by purchase		$4,825,628 20
Equipment, since purchased		106,547 64
Construction on main line		18,308 03
Construction on Dresden Extension		522,493 12
Materials on hand		9,208 04
Due from agents	$16,520 65	
Due from Government, express Co., and other roads	6,485 27	
Due from individuals	6,997 81	
		30,003 73
Cash and cash items		100,106 90
Total assets		$5,612,295 66

Liabilities.

Capital stock paid in	$3,996,610 00	
Mortgage bonds	1,500,000 00	
Accounts payable	27,080 82	
Due other roads	4,279 09	
Income account—net earnings	84,325 75	
		$5,612,295 66

Your attention is called to the accompanying report of the superintendent for a statement in detail of the operations of the company in the various departments of its service.

Your board takes pleasure in acknowledging the efficient aid it has received from all officers and employés connected with the road.

By order of the board:

H. J. JEWETT, *President.*

Superintendent's Report.

ZANESVILLE, *May* 15, 1872.

To H. J. Jewett, president.

DEAR SIR: Herewith I submit a detailed report of the operations of the several departments of the road for the fiscal year ending March 31, A. D. 1872:

178 Operative earnings and expenses.

Receipts:			
From freight earnings		$270,869 72	
passenger earnings		124,867 39	
express service		19,999 92	
mail service		9,967 48	
miscellaneous sources		14,133 21	
			$439,837 72
Disbursements:			
For transportation expenses		$51,546 19	
motive power expenses		106,340 95	
maintenance of cars		25,931 61	
maintenance of way		82,164 48	
gen'l expns., loss and damage	$3,190 19		
legal services	1,224 21		
gen'l offices, salary and expe's	13,353 00		
		17,767 40	
			283,750 63
Total net earnings for year			$156,087 09

The proportion of expenses to earnings (64.51 per cent.) is rendered comparatively large by the excessive general repairs maintained in all departments, but is compensated for in the thorough improvement manifest in each.

Comparative statement.

In the absence of complete data, owing to the road being operated by the present company but seven months of the preceding year, I am unable to make a detailed comparative statement of each department for consecutive years, but submit the following in total:

Total earnings for the year ending March 31, 1871	$390,224 02
Total expenses for the year ending March 31, 1871	331,632 01
Total net earnings for the year ending March 31, 1871	58,592 01
Total net earnings for the year ending March 31, 1872	132,643 23
Total increase	$74,051 22

179 Transportation.

There were carried during the year 141,450 passengers (free passengers and commuters not estimated) and 148,249 tons of freight.

Mileage.

Miles run by passenger and baggage cars	559,939
Miles run by passenger engines	175,345
Miles run by freight cars	1,728,323
Miles run by freight engines	205,130
Miles run by construction cars	358,120
Miles run by construction engines	43,765
Total mileage	3,070,622

Owing to the increased demands of the trade, in May an accommodation train from Circleville to Zanesville and in November a coal train over the entire length of the road were added to the list. All trains have been run with marked regularity, without serious delay, and with but one accident; that, caused by a broken rail, threw two cars from the track, causing but slight damage to one car of stock.

There have been no passengers and but two employes injured during the year; the latter had hands bruised while coupling cars. Their injuries were slight and are again fit for work.

There were two men killed by trains, neither of which are attributable to negligence of the company or its employés. In June an intoxicated man, while stealing a ride on a coal train, fell between the cars while in motion; in January a man, in a scuffle with citizens at a station, was thrown between two cars of the train while in motion.

Motive power.

I append a table showing the total number, kind, and condition of all locomotive engines owned by the company, together with the year's performance of each, which, in recapitulation, shows that of sixteen engines:

180 12 are in running order.
9 are in first-class order.

7 have received new steel furnaces and thorough repairs during the year.

2 are now receiving steel furnaces and thorough repairs.
3 need steel furnaces and thorough repairs.
2 have been taken out of service, owing to their construction and condition.

Fuel.

There have been consumed in all departments, including engines and station expense—

329,858 bushels coal, costing	$18,888 83
864¼ cords of wood, costing	1,668 85
Total cost of fuel	$20,557 68

Maintenance of cars.

Passenger cars:

2 new passenger cars have been built.
2 passenger cars have been rebuilt.
1 passenger car is now being rebuilt.
2 passenger cars need rebuilding, and the balance are in good running order.

Freight cars:

10 box cars have been built to replace those condemned and the balance of all equipment repaired and its condition bettered during the year.

Equipment.

Locomotive engines	16
Passenger cars	12
Baggage cars	4
Caboose cars	4
Box cars	67
Stock cars	39
Coal cars	244
Platform cars	16

Machinery and shops.

Only such new shop machinery as was indispensable has been added and the old maintained. The buildings are frame,
181 old, ill planned, and should be rebuilt, as in their present condition they are inadequate to the requirements and dangerous to the property of the company.

Maintenance of way.

Bridges:

Two spaces of 150 feet each of the bridge over the Scioto river (numbered 18) near Circleville have been rebuilt. Numbers 2, 3, 4, 5, 6, 7, 8, and 9, over Todd's Fork of the Little Miami river, and 37, over South Fork of Jonathan's creek, have been roofed and housed.

AILWAY.

NG MARCH 31, 1872.

	Remarks.
4	Switching in Zanesville yard; will soon need general repairs.
1	Received steel furnace in August, 1871; in good order.
3	Needs new furnace and general repairs immediately.
2	Needs new furnace and general repairs immediately.
0	New furnace in May, 1871; in good order; equipped with Westinghouse air-brake.
3	In shop receiving new steel furnace and general repairs; will be out in May.
3	New iron furnace in 1870; in fair order; equipped with Westinghouse air-brake.
4	New steel furnace in Oct., 1871; in good order; equipped with Westingh'e air-brake.
7	New steel furnace in April, 1871; in good order.
3	New steel furnace in March, 1872; in good order.
4	New steel furnace in January, 1872; in good order.
5	Out of service November, 1871.
3	Out of service March, 1872.
0	New steel furnace November, 1871; fair order; wants new cylinders.
4	New iron furnace in 1870; fair order; wants new cylinders.
5	In shop for new steel furnace and general repairs; will be out in July.
9	Received from P., C. and St. L. railway November, 1871.
7	Received from P., C. and St. L. railway November, 1871, and returned March, 1872.
3	

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REPORT O

Number.	Builders.	Placed on road.	W't, tons.	Cyl'ders.		Drivers.	
				Diam.	Stroke.	Number.	Diam.
							F.
1	Hinkley & Drury	April, 1853	21	14	22	4	4
2	" "	" "	21	14	22	4	4
3	" "	June, 1853	21½	15	20	4	5
4	" "	" "	21	14	22	4	4
6	" "	Aug., "	21½	15	20	4	5
8	" "	Sept., "	21½	15	20	4	5
9	Morse & Richar'n	Nov., "	21	14	20	4	5
10	" "	Dec., "	21	14	20	4	5
11	M. W. Baldwin	—, 1865	32½	17	24	4	5
12	Niles & Co.	Jan., 1854	25	16	20	6	4
13	" "	April, "	25	16	20	6	4
15	Hinkley & Drury	June, "	23	15	20	4	5
16	" "	" "	23	15	20	4	5
17	C. & Z. railway	May, 1867	33	17	24	6	4
18	" "	Oct., "	33	17	24	6	4
19	" "	Nov., 1868	33	17	24	6	4
31	R. Norris & Son	" 1871	------	16	22	6	4
32	" "	" "	------	16	22	6	4

CINCINNATI AND MUSKINGUM VALLEY RAILWAY.

OF LOCOMOTIVES FOR THE YEAR ENDING MARCH 31, 1872.

rs.		Mileage.				Repairs of engines.			Remarks.
Driv's.		Passen'r.	Freight.	Constr'n.	Total.	Labor.	Material.	Total.	
F.	In.								
4	6	610	28,430	150	29,190	1,112 10	440 54	1,552 64	Switching in Zanesville yard; will soon need general repairs.
4	6	3,850	15,250	2,000	21,100	3,750 53	1,193 38	4,943 91	Received steel furnace in August, 1871; in good order.
5	8	34,145	750	200	35,095	1,061 83	325 53	1,387 36	Needs new furnace and general repairs immediately.
4	6	1,300	4,180	24,205	29,685	595 75	410 07	1,005 82	Needs new furnace and general repairs immediately.
5	8	40,885	130	------	41,015	1 422 34	577 46	1.999 80	New furnace in May, 1871; in good order; equipped with Westinghouse air-brak
5	0	------	------	------	------	1,844 37	979 29	2,823 66	In shop receiving new steel furnace and general repairs; will be out in May.
5	0	39,705	70	80	39,855	1,126 31	457 32	1,583 63	New iron furnace in 1870; in fair order; equipped with Westinghouse air-brak
5	0	24,510	1,800	------	26,310	2,778 29	1,287 85	4.066 14	New steel furnace in Oct., 1871; in good order; equipped with Westingh'e air-brak
5	0	510	31,665	------	32,175	1,052 08	827 09	1,879 17	New steel furnace in April, 1871; in good order.
4	0	------	7,920	5,330	13,250	3,285 59	937 34	4.222 93	New steel furnace in March, 1872; in good order.
4	0	240	14,410	3,820	18,470	3,481 21	995 93	4,477 14	New steel furnace in January, 1872; in good order.
5	0	14,920	------	------	14,920	352 43	149 82	502 25	Out of service November, 1871.
5	0	14,530	6.665	6,380	27,575	1,066 59	453 24	1,519 83	Out of service March, 1872.
4	6	------	18,990	500	19,490	2,627 13	925 07	3,552 20	New steel furnace November, 1871; fair order; wants new cylinders.
4	6	------	27,940	------	27.940	1,543 85	493 49	2,037 34	New iron furnace in 1870; fair order; wants new cylinders.
4	6	------	24,160	------	24,160	1,631 53	665 32	2,296 85	In shop for new steel furnace and general repairs; will be out in July.
4	7	140	11,590	1,100	12,830	307 44	78 55	385 99	Received from P., C. and St. L. railway November, 1871.
4	7	------	11,180	------	11,180	284 95	105 22	390 17	Received from P., C. and St. L. railway November, 1871, and returned March, 187
		175,345	205,130	43,765	424,240	29 324 32	11,302 51	40,626 83	

Engines Nos. 5, 6, and 14 out of service before the purchase of the road.

Trestles:

Six trestles, of an aggregate length of 745 feet, have been rebuilt. Three trestles have been replaced with masonry. Such general repairs to all masonry has been made that none is anticipated during the coming year.

Buildings.

4 water-station houses,
1 depot-station house,
1 division-house,
1 engine-house (at Circleville) have been built during the year.

Fencing.

896 rods of fencing were built, mainly as consideration for right of way not heretofore secured.

Roadway.

19,360 feet of track *was* laid with new and 7,722 feet with repaired or mended iron; 25,061 ties have been used.

The side tracks have been lengthened in the aggregate 8,654 feet, rendered essential by the increased traffic and business re-
182 quirements. The western divisions have received slight ballasting, and the whole condition of the track is much improved.

Dresden Extension.

With the exception of slight ballasting and the finishing of station-houses now being built the extension of the road from Zanesville to Dresden junction is about completed at a total cost of $508,116.64 (for items see treasurer's report). Regular trains were placed on this portion of the road October 6, 1871, and have continued with success and without mishap since, developing a promising local and securing to the road much through business that has been but local heretofore.

To the zealous and efficient care of those in charge of departments and the manifest interest of employés is due the credit for the marked improvement of all and the increased popularity of the road among patrons.

Respectfully,

C. C. WAITE,
Sup't and Engineer.

(See table following, marked p. 183.)

184 (EXHIBIT 26.)

PHILADELPHIA, *October* 12, 1872.

Chas. Moran, Esq., New York.

MY DEAR SIR: After going over all the matters connected with the Muskingum Valley road we are clear that the best thing to be done for its shareholders is to lease the road to the Pittsburgh, Cin-

cinnati & St. Louis Railway Company on the terms set forth in the inclosed lease, by which the shareholders will get all its returns.

I am sure it can be managed more economically than on any other plan, and when its business is heavy it can get aid by which it can be controlled in such a manner as will be necessary.

The election of Mr. Jewett, the president of the road, to Congress will necessarily take him from the line a good deal, and hence we believe that this lease should be executed without delay.

I would be glad to have your approval of the matter as it stands, and if so received Mr. Jewett will call a meeting of the stockholders and have it ratified at an early date.

Very truly yours, THOMAS A. SCOTT,
Per G.

(EXHIBIT 27.)

NEW YORK, *October* 15, 1872.

Thos. A. Scott, Esq., Phila.

DEAR SIR: Your favor of 12th was duly received. I find no alteration whatsoever in the new proposed lease of the C. & M. V. road to the Pitts., C. & St. Louis Co. from the former one, to which I made objections which you yourself admitted were well founded. There is not a single stipulation in the whole lease to protect the interests of the stockholders of the C. & M. V. road, for you will admit that the examination of accounts and the arbitration of differences between the two companies are no valid protection, since the president of the C. & M. V. Co. is appointed by and therefore only represents the interests of the Pitts., Cin. & St. Louis Co., which
185 therefore, under such a lease, has full uncontrolled possession of the property of the shareholders of the C. & M. V. Co. Any lease should protect the interests of the minority of the stockholders, whom we represent, as fully as that of the majority, whom the president of the C. & M. V. Co. alone represents now or will represent hereafter.

Very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 28.)

NEW YORK, *October* 18, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I have your telegram of 17th inst. from Pittsburgh and in accordance with your suggestion beg leave to propose the following modifications of the proposed lease of the Cin. & M. V. R. R. to the P., C. & St. Louis R. R. Co.:

1st. That the P., C. & St. Louis Co. shall at no time make or prescribe any regulation adverse to the direction of traffic to or from the C. & M. V. R. R. Co. nor place any impediment to the direction of traffic to the latter road.

2d. That as long as the Little Miami R. R. is in the control of the

P., C. & St. L. Co. or the Penn. R. R. Co. it shall prorate between Morrow and Cincinnati on all traffic to and from the C. & M. V. R. R. Co. and permit the trains of the latter to run through to and from Cincinnati whenever this is necessary to the development of the traffic of the C. & M. V. R. R. Co., the latter company to be charged on such through trains only the usual mileage by the Little Miami R. R. Co.

3d. The tolls for through traffic over the C. & M. V. Co. shall be at all times the same as those charged by the P., C. & St. Louis Co. over their own road, and the latter company shall prorate with C. & M. V. Co. on all through traffic going from one road to the other and on all traffic going to points beyond either road.

4th. The P., C. & St. L. Co. shall guarantee that the net traffic earnings of the C. & M. V. shall never be less than the amount
186 necessary to pay the interest on the present first-mortgage debt, and any deficit, should there occur any, in the net earnings to meet the interest on said bonds shall be made up by the P., C. & St. L. Co. This is just and proper, because the latter company will entirely control the traffic of the C. & M. V. Co., both as its lessee and as owners and lessees of the only outlets of the traffic of the C. & M. V. Co. As the traffic yielded last year a surplus over and above the interest on the present debt, it can only be through the fault of the P., C. & St. L. Co. that the future earnings shall ever fall below those of last year, since the general rule is that the traffic of all properly managed roads increases steadily from year to year.

5th. No future expenditure of importance to be made for construction account except with the assent of a majority in interest of the owners of the shares other than those owned by the P., C. & St. L. Co. or by the Penn. Co. or by any party or parties for their account.

6th. The words "reasonable wear and tear excepted" at the end of 2d stipulation should be stricken out, because if the road and appurtenances are maintained at all times in their present condition (which is certainly not too high to insure economical working expenses and freedom from accidents), according to the stipulations of the proposed lease, how can there be any necessity for an allowance for "wear and tear"?

7th. Whenever a majority of the shareholders of the C. & M. V. Co. other than those controlled or owned by the P., C. & St. L. Co. and the Penn. R. R. Co. shall so elect, the surplus earnings of the road, beyond the interest on the present mortgage debt, shall be applied to the purchase or construction of rolling stock, so as to put an end to the hiring of equipments at 8 per cent. per annum, or at a mileage charge, as stipulated in the lease.

8th. The stipulation at the end of the 1st section that all future work and improvements shall be done by the party of the first part (C. & M. V. Co.) should be altered so as to read that they may be made by the party of the second part (P., C. & St. L. Co.) at the expense of the party of the 1st part, but no such expenditure
187 for future work and improvements shall ever be made in excess of the surplus earnings after payment of the interest on

the present mortgage debt except with the assent of a majority of the shareholders of the C. & M. V. Co. other than the shares owned or controlled by or held for account of the P., C. & St. L. Co. and the Penn. R. R. Co.

9th. The stipulation authorizing the president of the C. & M. V. Co. and his duly authorized agent to examine the books of the P., C. & St. L. Co. should be modified or enlarged so as to give this right also to the duly appointed agent of the owners of 10,000 shares; and the owners of that number of shares should have the same right as the president of the C. & M. V. Co. in regard to arbitraments in case they deemed any wrong had been or was done to their interests as stockholders. With these modifications Moran Brothers and their friends will assent to the lease. I inclose the proposed lease sent me by you.

Very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 29.)

ZANESVILLE, OHIO, *Nov.* 15, 1872.

T. A. Scott, G. B. Roberts, and Chas. Moran, directors.

GENTLEMEN: With the equipment we now have on the road our earnings are about at their maximum, and whether or not they are to be increased depends upon our ability to increase the equipment.

The business on the line of the road is on a continued increase, and if we were now able to meet promptly all demands made upon us our earnings would be largely in advance of what they now are. When the line to Cleveland is open those demands will be still more largely increased.

We need a much larger coal equipment, some increase also in both stock and box cars, and for an economical and profitable working of the road we ought to have at least six more engines.

I would have called your attention sooner to this subject,
188 but, being under the impression that the terms of a lease to the P., C. & St. Louis Company had been substantially agreed upon between the representatives of the stockholding interests, I thought it better to postpone the subject until that event took place that the lessee might determine for itself the extent of the equipment required.

But being advised, within a few days, that the consideration of that subject had, for the present at least, been abandoned, I regard it proper that we should now consider our necessities and act as promptly as possible in the premises.

Unless some other means can be devised I propose putting on the road a second mortgage for $500,000 to secure bonds for that amount, the proceeds of which shall be used exclusively in the purchase of equipment and in the building of branches into the coal fields.

If this plan is agreed upon I will at once contract for the cars and engines, relying upon our ability to negotiate the bonds in time to make the necessary payments.

Our home directors will not take the responsibility of acting in the premises without the concurrence of those directors who really represent the principal stockholding interest of the company.

If you approve of the plan proposed, and will so advise me, I will convene the board and have the necessary action taken, or if you will name a day when you can conveniently attend a meeting of the board I will have one convened for such day.

With the present equipment the road can earn enough to maintain itself and pay the interest upon its present debt with some surplus. But with an equipment equal to its necessities it can increase its earnings largely without any corresponding increase of expenses.

The past year has been rather an expensive one, owing to the necessity of changing and replacing many of the bridges on the road and of doing some other permanent work, but the earnings will be amply sufficient to pay the interest upon the present debt.

We have no outstanding liabilities whatever beyond the mortgage obligation; all our current expenses are promptly paid.

189 The property is a valuable one, and needs only proper handling and management to develop satisfactory and profitable results.

Very respectfully, H. J. JEWETT, *President.*

(EXHIBIT 30.)

NEW YORK, 18*th Nov.*, 1872.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: I wrote to you on the 18th October last, in answer to your request that I should communicate such suggestions as I deemed would make the lease of the C. & M. V. R. R. to the P., C. & St. L. Co. satisfactory to me and my friends. To this letter I have received no reply; but to-day I receive a letter from Mr. Jewett, proposing an issue of $500,000 second-mortgage bonds, to be used in the purchase of additional equipment and in the building of branches into the coal fields. To this scheme there can be no objection, provided that these bonds can be negotiated at a fair rate and that the road can beyond a doubt earn wherewith to pay the interest on them; but if the bonds be created and equipment and branches constructed on the supposition that the bonds can be negotiated in time to meet the necessary outlay any disappointment in regard to the negotiation of the new bonds or in regard to earning the interest on them would lead to the foreclosure of the second mortgage and the extinction of the present shares.

You know the present condition and future prospects of the road far better than I do, and if you are convinced that the new equipment can be purchased with the new bonds, and that the next earnings of the road will be considerably increased thereby, I will assent to the new issue of bonds and get my friends to assent to it also. What has made me somewhat uneasy as to the future of the C. & M. V. Co. is the absence of all assurances that a portion of the

through traffic should be permitted to go over the C. & M.
190 V. road, which I am sure is the road that can do it most economically when properly equipped. Under the present condition of the interests of the Pennsylvania Co. in the P., C. & St. L. road and Little Miami road and C. & M. V. road, does it make any difference whether the traffic goes via Columbus or via the Cin'ti & M. V. road? What objection is there to executing a lease, with the protection to the minority interest in the Cin'ti & Mus. V. road, suggested by me in my letter of 18th October last? If the P., C. & St. Louis Co. fairly treats the C. & M. V. road there would never be any cause to exercise the rights reserved in favor of the minority shareholders.

Very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 31.)

PHILADELPHIA, *November* 19, 1872.

Charles Moran, Esq., New York.

MY DEAR SIR: On receipt of your letter of 18th October I wrote to our people in the West that "I thought, as Mr. Moran objected so strenuously to trusting the Ptg., Cincinnati and St. Louis Railway Company with the management of the line, as we have others of a like nature, there was but one thing to do, and that was to leave the line supply its own equipment and other facilities to do its work."

In regard to the issue of $500,000 of second-mortgage bonds, as proposed by Mr. Jewett, I do not believe that they can be placed at all unless the stockholders will agree to come up and take them *pro rata* at a fixed price.

Our idea of the Muskingum Valley line, if we had taken it under the lease, was to put on additional equipment and develop its coal trade both to Cincinnati and to Cleveland, to effect which we have been endeavoring to arrange to get a line built from Dresden junction, the point of connection with the Ptg., Cin. & St. Louis railway, over to the Cleveland & Mt. Vernon road, a distance of
191 about thirty miles. This would give the road a very good outlet to the lake at Cleveland, and the coal would there find a large market.

I am sorry that you take the view you do of the lease as we proposed it, because I am convinced that it was the true plan to bring it out for all the stockholders in common.

Of course our company would not be willing to assume the responsibility you name in your letter; but they are willing to work the line at its cost, and give the stockholders all the net results. This is all that I think you in justice can ask them to do.

Unless you will be prepared in common with the other stockholders to take your *pro rata* proportion of the bonds, I think it would be an unsafe proceeding to incur obligations looking to the negotia-

tion of second securities. We might find ourselves in a very embarrassed position by such action.

Upon review of the whole subject, I have only to recommend to you that the lease as prepared by Mr. Jewett originally to the Ptg., Cin. & St. Louis Railw'y Co'y should be executed, and under it the line can be so developed without calling upon the shareholders as to ultimately make it a valuable property, in the meantime also providing the interest on the money now represented by the bonds in which you stand with us in common.

Very truly yours, THOMAS A. SCOTT, *Pres't.*

(EXHIBIT 35.)

PHILADELPHIA, PA., *Nov.* 27, 1872.

H. J. Jewett, Esq., pres't Cin. & Mus. Valley R. R., Columbus, O.

MY DEAR SIR: After receiving your letter in relation to making additional bonds for equipment on the Muskingum Valley road I went to New York and had an interview with Mr. Moran.

192 He has finally agreed that the lease shall be executed on the basis prepared by you, with two clauses in addition, to the effect:

1st. That, in the event of the net earnings of the line not being sufficient to protect the interest on the existing first-mortgage bonds as it matures, the lessee should advance the needful means to pay the coupons at maturity, charging any such advance over the net earning, in open account, to be returned out of subsequent earnings.

2d. That any stockholder of the company should have the right, during the operation of the lease, to examine the books of the lessee to ascertain whether the conditions of the lease are being fairly complied with under the terms thereof.

I submitted these modified arrangements with Mr. Moran to the board of directors of Ptg., Cin. & St. Louis railway to-day, and they passed a resolution authorizing the lease of the road on the terms originally prepared by you with these additions.

We will call a meeting of stockholders of our company to ratify the lease at as early a date as our by-laws will permit.

We should be glad if you would prepare this lease and have it approved by the Muskingum Valley board and ratified by your stockholders, so that it may go into effect the 1st day of January next.

This will relieve the Muskingum Valley Company and its shareholders from the necessity of providing additional bonds for equipment and other purposes, and place the line in full working harmony with our roads.

Hoping that this matter will meet your full approval and concurrence,

I am very truly yours,

(Signed) THOMAS A. SCOTT, *Pres't.*

193 PHILADELPHIA, *December* 3, 1872.

H. J. Jewett, Esq., pres't Cin. & Muskingum Valley R. R., Columbus.

MY DEAR SIR: Mr. Moran has sent me a copy of his letter, to which I have replied, as per inclosed copy.

Please make the lease to conform to the letter I wrote you a few days ago, with the additions stated in my letter to Mr. Moran.

I have been trying very hard to get this thing in a satisfactory shape to Mr. Moran, and believed, when I left him in New York a few days ago, that all the points were thoroughly agreed to.

Very truly yours,

(Signed) THOMAS A. SCOTT, *Pres't.*

Lease and Contract.

An indenture of lease made the — day of December, A. D. one thousand eight hundred and seventy-two (1872), between the Cincinnati and Muskingum Valley Railway Company, of the first part, and the Pittsburgh, Cincinnati and St. Louis Railway Company, of the second part.

Whereas the railways of the parties hereto connect directly with each other and said parties hereto are desirous to enter into a lease and contract with each other in respect to the use, management, and working of the railway of the party of the first part:

Now, this indenture witnesseth that the party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of said party of the second part to be paid, kept, and performed, have leased, demised, and to farm let, and by these presents do lease, demise, and to farm let, unto the party of the second part and they take the railway of the party of the first part, now constructed and to be constructed, and ready for use and operation and to become ready for use and operation from its point of connection with the railway of the party of the second part
194 at or near Dresden, in Muskingum county, Ohio, to its terminus at Morrow, Warren county, Ohio—

Together with all the depots, stations, buildings, appurtenances, and property, real and personal, to said demised railway belonging and appertaining (as well that now owned as that hereafter to be acquired by the said party of the first part at and between the said before-mentioned points); to have and to hold the said demised property, real and personal, unto the party of the second part, their successors and assigns, to and for the full end and term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy-three (1873).

That, in consideration of the premises, the party of the first part hereby covenants and agrees that the party of the second part shall at all times during the term aforesaid have full and exclusive power, right, and authority to use, manage, and work the said railway of said party of the first part, and shall have the right to fix the tolls thereon (but not at a higher rate than is authorized by the charter of the party of the first part hereto); and, further, that said party of the second part shall have full, free, and exclusive right to charge

and collect all of the said tolls on and freight charges and dues to accrue from said road during the said term, and to appropriate the same in the way and manner hereinafter mentioned, and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid and all other lawful powers and privileges which can or may be lawfully exercised and enjoyed on or about the said demised railway and property as exclusively, fully, amply, and entirely as the same might or could have been used, exercised, and enjoyed by said party of the first part had this lease and contract not have been made, and as exclusively, fully, amply, and entirely as said party of the first part have authority by law to grant the same.

And in consideration of the premises the party of the second part hereby covenants to and with said party of the first part as follows, viz:

First. That the party of the second part shall and will,
195 at all times during the hereby demised term, work, use, manage, maintain, operate, and keep in public use the railway of the party of the first part, with its appurtenances, from its point of connection with the railway of the party of the second part at or near Dresden, in Muskingum county, Ohio, to its termination at Morrow, Warren county, Ohio, as aforesaid, and will so work and efficiently operate said railway and appurtenances between the said points, with all such locomotives, cars, and rolling stock owned and to be owned, controlled, or used by them, the party of the second part, as shall in the judgment of the party of the second part reasonably be required for and properly adapted to promptly and fully accommodate the business thereof, and shall and will collect and receive all of the said tolls, freight charges, and dues which shall accrue as aforesaid and apply and appropriate the same in the way and manner following, to wit:

1st. To the payment of the annual cost of repairing, maintaining, and perpetuating for public use the railway and property and all the expenses of working, using, managing, maintaining, and operating and running the same, including eight per cent. per annum upon the cost of such engines as the party of the second part at its own expense may put on said road and the usual charge for car service for cars actually used and employed thereon and not owned by said first party, premiums for insurance, and all tolls, taxes, or assessments now or hereafter to be levied or assessed by the laws of the United States or the State of Ohio upon the traffic passing over said road and the property of the said party of the first part now or hereafter acquired by the party of the second part by and under this lease—

It being distinctly understood that certain work yet to be done and required to perfect and completely finish the said road hereby demised, as well such additions and improvements thereto as the parties of the second part shall determine to be necessary from time to time for the prompt and economical movement of the traffic on and over said road, shall be done by the party of the second part, but at the expense of the said first party.

196 2d. To pay the surplus, if any thereafter remains, to the treasurer of the party of the first part: Provided, however, that

in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance over the net earnings in open account to be returned out of subsequent earnings.

Second. That the said party of the second part shall and will at all times keep the buildings upon the lands hereby demised insured against loss by fire, paying the premiums therefor as aforesaid, and will keep said demised railway and property in good order and repair, and will, at the expiration of the hereby demised term or other sooner determination of this lease and contract, yield and deliver up the hereby demised railway and property and appurtenances in the same good order and repair that the same are now in or may be put in during the hereby demised term.

Third. That the party of the second part shall keep accurate accounts of all the business receipts and revenues arising from the said demised property, and their books relating thereto shall be subject to the examination of the president of the party of the first part or any agent duly authorized by them to examine the same, and any stockholder of said first party shall have the right during the operation of this lease to examine the books of the party of the second part to ascertain whether the conditions of this lease and contract are being fairly complied with under the terms thereof.

And the party of the second part shall furnish to the party of the first part monthly accounts of all the gross receipts and a semi-annual account of all the said business receipts, revenues, and expenses; and the said president or duly authorized agent of the party of the first part shall have the right at all times to travel without charge on the cars of the party of the second part over the said demised railway for the purpose of ascertaining the business
197 and management of the said railway and reporting thereon to the party of the first part.

Fourth. That if any difference shall arise in relation to this lease and contract between the parties hereto each shall select a referee of experience and skill in railway management, and the said referees shall select another of like experience and skill, and the three so chosen shall hear and decide such difference, and their decision or that of a majority of them shall be final and conclusive upon the parties hereto.

In witness whereof the said parties to these presents have caused their respective common or corporate seals to be hereunto affixed, attested by their respective presidents and secretaries.

Dated the day and year first hereinbefore written.

Attest: ——— ———,
President Cincinnati and Muskingum Valley Railway Co.

——— ———,
Secretary C. & M. V. R'y Co.

Attest: ——— ———,
President Pittsburgh, Cincinnati and St. Louis Railway Co.

——— ———,
Secretary P., C. & St. L. R'y Co.

Whereas the railway of the Pittsburgh, Cincinnati and St. Louis Railway Company and the line of road of this company connect at or near Dresden, county of Muskingum, in the State of Ohio, forming a continuous line of road between the city of Pittsburgh, in the State of Pennsylvania, and the town of Morrow, Warren county, Ohio; and

Whereas it is proposed by the Pittsburgh, Cincinnati and St. Louis Railway Company to lease for the term of ninety-nine years the road of this company upon such terms and conditions as may be agreed upon; and

Whereas the president of this company now presents to this board the draft of a lease as proposed by the said P., C. & St. L. Railway Company, which is in the words and figures following:

198 Now, therefore, it is here ordered by this board—

First. That a meeting of the stockholders of this company be called to be held at the office of the company, in the city of Zanesville, Ohio, on the ninth day of January, 1873, between the hours of 10 o'clock a. m. and 2 p. m., for the purpose of considering said proposition for lease and of assenting to or declining the same.

Second. That the president of this company is hereby authorized to execute said lease, with such modifications thereof as may be consented to by Charles Moran, Esq., one of the directors of this company, to be submitted to this board for its approval, after such modifications are made and before said meeting of stockholders, at such meeting of the board as may be called by the president.

Third. That at such meeting of the stockholders the said lease shall be submitted to them for their approval or rejection, and they shall vote thereon by ballot, the ballot designating the number of votes cast; the name of the stockholder voting; whether in person or by proxy, and if in favor of the lease the words "lease, yes" shall be indorsed thereon; if opposed thereto, "lease, no."

Fourth. That the secretary of this company is hereby directed to publish a notice of said meeting in the Zanesville Courier and Signal, two papers published in the city of Zanesville, for at least thirty days previous to said meeting, and stating the object thereof.

(EXHIBIT 47.)

ZANESVILLE, O., *Nov.* 29, 1872.

Charles Moran, Esq., director.

DEAR SIR: You are hereby notified that a meeting of the directors of this company will be held at this office on Friday next, December 6th, at 10 o'clock a. m.

By order of the president.

I. A. LIPPINCOTT, *Secretary.*

199 (EXHIBIT 48.)

COLUMBUS, O., *Nov.* 29, 1872.

Charles Moran, Esq., New York.

DEAR SIR: Not hearing from you in answer to my communication

of the 15th instant, but being advised by Col. Scott that he had an interview since the receipt of my letter with you, and that you concurred in the proposition to lease this road to the P., C. & St. L. Co. upon the terms mentioned in the draft of lease heretofore prepared under the direction of Col Scott, with certain modifications, and requesting me to have the draft of lease made to conform with those modifications and to have as early action by the C. & M. V. board as possible, I have called a meeting of the board for Friday of next week (Dec. 6), one week from to-day, and will then submit the lease for approval.

Very respectfully, H. J. JEWETT, *President.*

(EXHIBIT 37.)

ZANESVILLE, O., *Dec.* 10, 1872.

Charles Moran, Esq., New York.

DEAR SIR: The undersigned, directors of the C. & M. V. R'y, representing the stockholders here, beg to say that in acting upon the lease of the C. & M. V. R'y to the P., C. & St. L. Co. we refer it back to you for such modification as you might agree to, and before your final action in the premises we desire to call your attention to a few facts as well as to express our conviction upon a few propositions:

1. The Penna. Co. owns a majority of the stock of this company, also a majority in P., C. & St. L. Co., subjective to the protection which the law now gives to the minority stockholders and which would, we are advised, prevent the Penna. Co. or the P., C. & St. L. Co. from voting its stock, either upon the proposition of the lease of the road of this company or upon any other subject-matter
200 of difference between the two companies, they having the absolute control of this company. The lease waives the protection which the law extends — the minority stockholders and gives the absolute control of the property of this company to the lessee. Should you not therefore be very careful in agreeing to the terms of the lease?

2. By the terms of the lease it is assignable without any reference to the consent of this company. Suppose it to be assigned to a totally irresponsible party, what protection would this company have in the event of a breach of lease?

3. Suppose they would fail to pay the coupons, by what means could this company reclaim the possession of its property and prevent the sacrifice thereof?

4. Suppose it would make default in any other particular, by what means could this company protect itself so long as the Penna. Co., through its majority of stock, could designate the officers and directors of this company, and in that way waive the consequences of any such default?

5. Of what benefit could an arbitration be if the company itself is subject to the control of the lessee and would therefore waive the consequences of such arbitration?

6. Is it likely that an arbitration will ever be demanded by a

board of directors elected by the lessee, in all probability the board of directors of the one company being the board also of the other company?

7. In view of the fact that this company, with its poor equipment and advantages, has demonstrated its ability to earn enough above expenses to pay the interest on its bonded debt we think that it should not be left an open question in the lease, but, on the contrary, the lessees should be bound unqualifiedly to the payment of this interest promptly at maturity without charge to or recourse on this company, whether the net earnings under their management be sufficient or not, and in the event of failure to meet this obligation promptly the lease to lapse or be forfeited.

Whilst we feel disposed to approve any lease you may make, knowing that our home stockholders are wholly powerless, being so largely in the minority, we have felt it our duty to make these
201 suggestions and to impress you with the importance of great care in considering the provisions of the lease.

Yours very respectfully, M. CHURCHILL,
E. E. FILLMORE,
Directors C. & M. V. R'y.

P. S.—You will observe by reference to the treasurer's report for the year ending March 31, 1872, that the net earnings above interest on bonds, operating expenses, and repairs were $43,000.

The road now under contract and assured, from Dresden to Oxford, connecting with Cleveland, Mt. Vernon & Columbus R'y (thus making a through line from Cleveland to Cincinnati by this route), must result in greatly increased traffic on our road, and we think with proper management the stock in the C. & M. V. R'y will in a few years become valuable.

Respectfully, M. CHURCHILL.
E. E. FILLMORE.

(EXHIBIT 32.)

NEW YORK, *Dec.* 2, 1872.

H. J. Jewett, Esq., pres. Cin. & Muskingum Valley R. R. Co., Zanesville, Ohio.

DEAR SIR: I am in receipt of your favor of 29th Nov. Before executing the lease I should like to see it, so as to be sure that the clauses assented to by Mr. Scott for the protection of the minority interest of the stockholders are properly and clearly expressed, as to them alone can the minority depend for the protection of their interests should they be disregarded or infringed by the lessees in the future. A delay of a week in the execution of so important a document can be of no importance to any one concerned with it. The stipulations consented to by Col. Scott are:

1. The P., C. & St. L. Co. to guarantee the interest on the first-mortgage bonds of the C. & M. V. Co. If the future earnings are inadequate to meet the interest, the deficiency to be furnished by the P., C. & St. L. Co.

202 2. The words "reasonable wear and tear excepted" to be stricken out at the end of 2d stipulation in the old lease sent me.

3. The stipulation authorizing the president of the C. & M. V. Co. and his duly authorized agents to examine the books of the P., C. & St. L. Co. to be enlarged so as to give this right also to the duly appointed agents of the owners of 10,000 shares or over, and the owners of that amount of shares to have the same right as the president of the C. & M. V. Co. in regard to arbitraments in case they deem any wrong be done to their interests as stockholders by the lessees.

Very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 33.)

NEW YORK, *Dec.* 4, 1872.

H. J. Jewett, Esq., pres. C. & M. V. Co., Zanesville, O.

DEAR SIR: I have this day written to Col. Scott in regard to the proposed lease of the Cin. & Mus. V. R'd to the P., C. & St. L. Co. He has understood differently from what I did the clauses proposed to be inserted in the lease for the protection of the minority interest. I therefore ask you to defer all action on the lease until you hear from me or Col. Scott after he has received the letter I addressed him to-day on this subject. A delay of a few days cannot be of importance in this matter.

Truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 36.)

NEW YORK, *Dec.* 4, 1872.

Thos. A. Scott, Esq., pres. Pitts., Cin. & St. Louis Railway Co., Phila

DEAR SIR: I am in receipt of your favor of yesterday by which I learn with deep regret that we greatly differ in our understanding of the conclusions arrived at in our recent interview. I dis-
203 tinctly understood you to acknowledge that your company, having the control of the entire traffic of the Cin. & Mus. Valley road, would guarantee that its earnings should never be less than the amount needed to meet the interest on the first-mortgage bonds. This guarantee cannot certainly be burdensome to your company, since the natural order of things in this country is that all railroads show an annual increase in their earnings, and this should be more the case with the C. & M. V. road than any other, because its traffic in the past has been crippled for want of means for its proper development, and by the policy of the adverse interests which controlled the connections of the road at both of the termini. To advance the deficiency when it occurs to meet the interest and charge it to the future earnings of the C. & M. V. Co. would be piling up claims against C. & M. V. road by means of which future managers of your company could have the C. & M. V. stockholders

sold out whenever they deemed it to the interest of your company to do so. The only remedy for injustice done by the lessees after the execution of the lease will be by litigation before the courts or by the stipulations for the appointment of arbitrators to decide on the questions in dispute. What protection can the stipulations for arbitraments be to the minority of the stockholders of the C. & M. V. Co. when the president appointed by your company, the sole party who can be guilty of any injustice under the lease, is the only one who can demand an arbitrament and appoint the arbitrator to represent the shareholders of the C. & M. V. Co.? Your company would under this stipulation virtually appoint both of the arbitrators. How could any rectification of a wrong when committed be obtained by such a process by the minority interest of the C. & M. V. Co. shareholders which we represent? That your company cannot suffer from such a provision (particularly when, as we proposed to stipulate, this right should only be given to the owners of 10,000 shares or over) is very evident, for, your company being in possession of the road, no minority interest will ever interfere with its management or demand an arbitrament unless some very gross wrong be done to the stock-
204 holders. And surely you cannot desire that the proposed lease shall permit gross wrongs to be done to the stockholders of the C. & M. V. Co. without possibility of redress. And I again repeat there can be no necessity for such great haste in the execution of a lease for 99 years. A month's delay to perfect and render the lease just towards the interests I represent is surely not unreasonable. I therefore earnestly beg of you as an act of justice, as well as of courtesy, that the execution of the lease be deferred until we perfectly agree upon its terms. I certainly have not evidenced any desire to interpose trivial difficulties in the way of the lease; nor any want of faith in your administration of the C. & M. V. road. All I desire is that the interests which I represent shall be left some power to protect themselves if unjustly treated by the lessees hereafter.

Very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 34.)

COLUMBUS, O., *Dec.* 9, 1872.

Charles Moran, Esq., New York.

DEAR SIR: Inclosed please find copies of letters received by me from Col. Scott in relation to the lease of the Cincinnati & Muskingum Valley road.

Also a copy of the lease prepared in conformity to those letters and previous instructions received from him.

Also a copy of the resolutions of the C. & M. V. board passed at their meeting Friday last.

You will perceive that the responsibility of the lease and the terms thereof is, by the board, confided pretty much to your hands.

The action of the board thus far is not conclusive in any sense. To

avoid any unnecessary delay if the lease is to be made, it was determined to call a meeting of the stockholders, giving ample time for the consideration of the terms of the lease, to be sub-
205 mitted to a future meeting of the board for approval before being submitted to the stockholders.

Very respectfully,

H. J. JEWETT,
P't C. & M. V. R'y Co.

(EXHIBIT 39.)

NEW YORK, 12*th December*, 1872.

Thos. A. Scott, Esq., president P., C. & St. Louis Railway Co., Philadelphia.

DEAR SIR: I received this morning the new draft of the proposed lease of the Cincinnati and Muskingum Valley railway to your company and the resolution of the board of directors of the latter company.

I am willing to assent to the proposed lease with the following modifications, to all of which I understood you to assent to at our last interview. These modifications cannot in any way, it appears to me, prove injurious to your company:

1st. At the end of the first stipulation as to the application of the earnings of the C. & M. Valley road strike out the word "and," in place of which insert the words "the party of the second part, but at." The C. & M. Valley Co., after the execution of the lease and delivery of the road to your company, cannot undertake to do any work on the road.

2d. Substitute for the 2d stipulation as to the application of the earnings the two following:

"2d. To the payment of the interest coupons on the existing first-mortgage bonds of the party of the first part as they severally become due; and whenever the annual net earnings of the leased road shall not be sufficient to meet the annual interest on said bonds the deficit shall be supplied and made up by the party of the second part."

"3d. To pay the surplus, if any remains after the payment of the annual coupons on the aforesaid first-mortgage bonds, to the treasurer of the party of the first part."

These provisos are eminently just and proper, because your company, after the execution of the lease, just as at present, con-
206 trols the earnings and the administration of the Cincinnati and Muskingum Valley road, controlling not only its local traffic, but also all the traffic going to and from the road at both of its termini, as well as all its expenditures. If ever the net earnings of the Cincinnati & Mus. Valley road are less than they are at present it will be entirely due to the action of your company, since, in the natural order of things in general, every railroad in the country shows an annual increase in traffic and earnings, and this must hereafter be the case to a greater extent with the C. & M. V. road than with almost any other road in the United States, because it has

hitherto never had the slightest share of the through traffic, nor even the ability to develop its local traffic; and, as at present the net earnings of the C. & M. V. road are more than sufficient to meet the interest on its first-mortgage bonds, it cannot be either dangerous or burdensome to your company to assume the future payment of this interest. I think it much better that your company should pay the interest itself, rather than go through the useless formality of paying the amount to the treasurer of the C. & M. V. Co., who will be nothing but a nominal officer until the time when there will be surplus earnings applicable to the payment of dividends on the shares of the C. & M. V. Co. To allow a deficit to accumulate against the C. & M. V. Co. for interest on its mortgage bonds would open the door for selling out the stockholders of that company for the benefit of your company or other parties, a contingency to which the stockholders of the C. & M. V. Co. should not be exposed.

3d. Strike out the words "reasonable wear and tear excepted" at the end of the second stipulation. If the road be maintained in its present condition, in accordance with the terms of the lease, there can be no wear and tear to be allowed for, since such allowance would permit the return of the road at the end of the lease in an inferior condition to that in which it was delivered to the lessees.

4th. In the fourth stipulation of the proposed lease a provision to be made giving to the holders of 10,000 shares or over of
207 the C. & M. V. Co. the right to call at any time for an arbitration and to appoint one of the arbitrators to decide whether the provisions of the lease are being honestly carried out by the lessees. Without such a stipulation any arbitration would be a mere farce, since the actions of your company in regard to the lease would be subject only to being revised and examined into by arbitrators appointed solely by your own company, since your company, owning the majority of the shares, will always have the appointment of the president and directors of the C. & M. V. Co.

I think, after mature examination and reflection, you will see that all these modifications are just and proper and in no way injurious to your company.

Truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 44.)

NEW YORK, 12*th Dec'r*, 1872.

H. J. Jewett, Esq., pres't Cinc'ti & Muskingum Valley railway, Columbus, O.:

DEAR SIR: I received to-day your favor of 9th inst., with inclosures. I now hand you herewith copy of my letter of this date to Col. Scott, which explains fully my views in regard to the modifications of the proposed lease. None of these stipulations can in any way injure the Pittsburgh, Cinc'ti & St. Louis Co., and they are absolutely necessary to the protection of the minority interest of the shareholders of the C. & M. V. Co.

Very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 38.)

NEW YORK, 13*th Dec'r*, 1872.

Messrs. M. Churchill & E. E. Fillmore, directors C. & M. Valley Railway Co., Zanesville, O.

DEAR SIRS: I have received with much pleasure your com-
208 munication of the 10th inst., and beg you to accept my thanks for the suggestions it contains and the confidence it shows you repose in me. I send you inclosed copy of my letter of 12th inst. to Col. Thos. A. Scott on the subject of the proposed lease, a copy of which I also sent to Mr. Jewett, president of your company. I think the modifications I proposed fully cover the points you desire to have protected. I am very glad to find that we so fully accord on this subject. I was not aware that probably the Penn. Co. & the P., C. & St. L. Co. could be prohibited from voting on their stock, though I fully appreciate the equity of such a prohibition. With your co-operation I think we can easily protect the interests of the minority of the stockholders of our Co. Being on the spot, you will discover, long before me, any injustice done to our Co. by the lessee, and under the lease, modified as I proposed, we can readily find means to protect the rights of the C. & M. V. Co. If you think the modification in regard to the payments of the interests on the first-mortgage bonds not sufficiently explicit you might propose to add after the words "the deficit shall be supplied and made up by the party of the second part" the words "so that the interest on said bonds shall be duly paid on maturity without charge upon the future earnings of the C. & M. V. railway." My letter fully explains that this is the object I have in view by the modification of the proposed lease, and I suppose my letter could be made a part of the lease by equity proceedings in case of dispute; but the addition of the above words would make it clear that the deficit was not to be made a charge against the future earnings of the road, as proposed by the P., C. & St. L. Co.

I am very glad to learn that you share my confidence in the future of our Co., provided we can have justice done it by those who will administer it. With the hearty co-operation of the local directors I feel confident that this can be secured, and that in a few years the shareholders will receive some remuneration for their investment and for their confidence in the road.

Believe me, very truly yours,

(Signed) CH'S MORAN.

209 (EXHIBIT 43.)

COLUMBUS, OHIO, *Dec.* 25, 1872.

Ch's Moran, Esq., New York.

MY DEAR SIR: I am in receipt of your valued favor of the 12th instant with the inclosed copy of your letter to Col. Scott of that date.

Not being familiar with the details of the several interviews you have had with Col. Scott, I don't know that I fully comprehend the scope of the changes you propose.

The earnings of the C. & M. V. Company are now fully equal to its present capacity with the present equipment upon it.

To increase the earnings the capacity of the road must be increased by sidings and branches, depot buildings, etc., and the equipment largely increased; and I cannot see upon what principle the lessee could be expected to make these additions, improvements, and furnish the increased equipment without being in some way compensated out of the increased earnings to be realized because of such improvements, etc., and without being in some way secured for the investment thus made in the event of the lease being, for any cause, canceled or forfeited.

I do not fully comprehend, either, what you expect to realize from an arbitration such as you propose to provide for.

I do not see how any award could be enforced unless the company, in its organized and corporate capacity, would assume the burden of enforcing it.

It would be well enough to have in the lease the provision for arbitration and make it the duty of the board of directors to demand such arbitration upon notice, in writing, being served by shareholders, or a certain amount, specifying the defaults on the part of the lessee of which complaint is made.

In this way, notwithstanding the stock interest of the lessee, you might perhaps accomplish the purpose you have in view.

The law requires that the principal office of the company should be kept on the line of the road; that the books, documents, etc., should be kept at such office and open to the inspection of any stockholder.

It is as important to the lessee as the lessor that the corporate organization of the company should be maintained. It must be maintained and maintained in due form of law; otherwise, whilst possibly there is no immediate danger, it would, at any time, be open to interference of the public authorities at the instigation of any dissatisfied party, and might lead to great confusion and disaster.

This would involve the necessity of an annual expense such as may be necessary to preserve such organization, but which is not provided for in the lease.

In my opinion, if the property is to be leased, you must rely on enforcing its provisions through the medium of the corporation.

You ought to provide for the maintenance of the corporation. This being done, you want the terms to be just and equitable between the parties, and for any further protection trust to the law and the courts.

Very respectfully, H. J. JEWETT, *Pres't.*

(EXHIBIT 40.)

NEW YORK, *Dec.* 28, 1872.

Messrs. M. Churchill and E. E. Fillmore, directors Cin. & Mus. Valley railway, Zanesville, Ohio.

DEAR SIRS: I had this pleasure on the 13th inst., handing you a copy of a letter addressed to Col. Thos. A. Scott on the subject of the proposed lease of our road to the P., C. & St. L. Co. Yesterday I had a visit from Col. Scott, in the course of which he called my attention to the stipulation in the lease that the advances to be made by the lessees, if any, to meet the interest on the present mortgage debt were to be charged to our company in open account to be returned out of subsequent earnings. This, it appears to me,
211 removes all risk of the present shareholders being sold out to repay these advances. Mr. Jewett, president of our company, as well as Col. Scott, calls my attention also to the fact that to increase the earnings of our road requires additional outlays for side tracks, equipments, etc., and that the lessee cannot be expected to incur them, if they are to be at his sole charge, so long as the earnings are inadequate to defray them. Mr. Scott assures me that the sincere desire of the P., C. & St. L. Co. is to develop the traffic of our road, and that they will do everything in their power to do so, except that for the time being they cannot transfer any of the through traffic from their road to ours; but this we can hardly expect them to do, and they will no more do it under present circumstances than after the execution of the lease, so that by assenting to this lease we are no worse off in this respect, whilst we obtain on fair terms the requisite means to develop our local traffic, which in time must enable the company to declare some dividend on the shares. Mr. Scott admits the validity of my objection to arbitration as a mode of settling future difficulties in regard to the lease so long as the arbitrators are all appointed by the lessee or those in their interest. He suggests that the clause in regard to arbitration be left out and the shareholders be left to their remedy at law before the courts. Mr. Jewett expresses the opinion that the shareholders cannot appeal to the courts except through the corporate officers of the company. He suggests that the provisions of the lease must therefore be enforced through the medium of the corporation. But how shall we secure this action on the part of the corporate officers so long as they are appointed by the lessee? And the corporate organization of our company must be maintained in the form of law, which will involve some expenditure, but this should be reduced to the lowest possible minimum, as the duty of the officers will be nominal, and therefore their remuneration should be in proportion to their labors. But how shall this be done? May I beg of you to reflect on these several points and give me your views in re-
212 gard to them immediately, so that I can modify my previous propositions, if deemed best so to do, before the day of meeting of the stockholders.

Very truly yours,

(Signed) CHAS. MORAN.

(EXHIBIT 41.)

ZANESVILLE, O., *January* 1, 1873.

Chas. Moran, Esq., New York city.

DEAR SIR: We are in receipt of your valued favor of 28th ult.; also yours of 13th ult., inclosing copy of yours to Col. Scott on the subject of the lease of the C. & M. V. R'y. The latter communication covers the contested points exactly and completely, in our judgment. In fact we were so well satisfied therewith that we did not think it necessary to reply, trusting as we did that you would be able to have the points named in your letter to Col. Scott incorporated in the lease.

We now note what you have to say in your last communication with reference to Col. Scott's explanation verbally as to the meaning of the clause of the lease providing for charging back to our company the deficit of earnings to pay interest, should there be any, which are to be paid from subsequent earnings, etc. Now, in reply, we beg to say that we have not a copy of the lease at hand to refer to, but we will venture a few suggestions based on our recollection of the tenor of that instrument. We understand from your last letter that you have waived your claims to a modification of some of the provisions of the lease, and that you now propose its acceptance as originally made. We may misapprehend your meaning, but we understand you are willing to accept the original lease as drawn with Col. Scott's verbal explanation of its provisions.

Our experience has been that verbal explanations of a written contract, and even written ones prior to the signing of a contract (unless incorporated in the instrument itself), are absolutely valueless. All such testimony is thrown out in case of contro-
213 versy, and the parties are compelled to confine themselves closely to the fair and reasonable construction and interpretation of the contract itself. Therefore we cannot attach any importance to Col. Scott's explanations. They are no doubt honestly made, and he means just what he says, and so long as he lives and occupies his position they will be carried out in good faith, but in this connection it should be remembered that this is a 99 years' contract—that life is uncertain—that it is certain he nor none of us, for that matter, can live to see the end of it. Therefore we think no ambiguous or doubtful language should be used in the lease as to points about which we can now foresee differences. Enough of such differences usually arise that cannot be foreseen or anticipated to make the execution of most contracts troublesome.

In case "subsequent earnings" do not as a matter of fact ever liquidate the charges made against us for the deficit of previous years, are these charges to be ultimately met by the C. & M. V. Co.? If they are, our original objection to this clause remains. If it be not the intention what objection can there be to saying so directly in so many words in the lease itself?

We beg to repeat the substance of our former letter to you on this point, namely: We think it would be very unwise to accept the

lease without its being stipulated in the most positive and unequivocal terms that the lessees should meet the interest on the bonds without recourse on the C. & M. V. Co., and that a failure to do so should work a forfeiture of the lease. A refusal to accept the lease on these terms is equivalent to the lessees saying in substance that they fear their management of the road may prove inefficient, and if it does they want the C. & M. V. Co. to suffer the consequences instead of themselves. We would much prefer having the road remain under the present management to incurring any risk of having a debt accumulated against it in the manner feared. It cannot be an open question as to the ability of the road to maintain itself on its own foundation. That has been already demonstrated.

In regard to the clause of the lease which authorizes the lessees to lay additional tracks, build depots, and put new rolling stock
214 on the road, upon which expenditures the C. & M. V. Co. shall pay an annual interest of 8 per cent., we beg to say that some such clause may be necessary for the interest of all concerned, but it seems to us that it should be well guarded in terms and made as specific as possible, for a generous construction of this article of the lease or perhaps such an abuse of the authority herein contained could be made as would absorb all the net earnings of the company, should there be any, indefinitely.

We have herein hurriedly embodied our views on the points raised by your letter, as you requested us to do. We make no pretensions to legal ability in the discussion of these questions, nor are we railroad men accustomed to the consideration of such questions as this lease. We have simply endeavored to lay before you for your consideration what seems to us a reasonable construction of the document in question, feeling, as we do, that our interests are in harmony, and that you will see that they are fairly protected in the lease.

Will you please, at the earliest moment after coming to a final understanding with Col. Scott as to the terms of the lease, furnish us a copy or at least an abstract of it?

Pardon this long communication and accept assurances of our highest consideration.

Very truly yours,

M. CHURCHILL,
E. E. FILLMORE,
Directors C. & M. V. R'y.

For myself allow me to say that I deem the matter of arbitration of very great importance—that is, as suggested by you, viz., that the owners of 10,000 shares may demand it.

As the directors will be elected by the votes of the lessees, and as the former would have to investigate proceedings in the courts, it would simply be A B as directors bringing suit *vs.* A B as lessees. In case of dissatisfaction on the part of minority stockholders it strikes me their only hope of redress would be through means of an arbitration. The arbitrator chosen by the lessees should be a man outside of the P., C. & St. L. or Pennsylvania interest.

215 Care should be taken to preserve the corporate existence of

the C. & M. V. R'y in legal form by annual elections; the expense of this will be but a trifle.

No truer adage was ever uttered than the one which says "If a man has too many irons in the fire some of them are liable to be burned." And what I most fear and what we should carefully guard against is danger arising from the fact of the operations of the Pennsylvania road becoming so widespread and extended. They will always have a Scott or a Thompson to manage their affairs.

Yours truly, E. E. FILLMORE.

(EXHIBIT 65.)

NEW YORK, *January* 6, 1873.

Thos. A. Scott, Esq., Phila.

DEAR SIR: I only received your telegram of Saturday late at night, too late to answer on that day. I am most anxious to meet your views so long as it can be done without the risk of sacrificing my interests and those of my friends through the action of the future management of your company. As you state that the advances to be made by your company, if any, to meet the coupons of the first-mortgage bonds of the Cin. & M. V. Railway Co. are only to be repaid out of future earnings during the lease and cannot lead to the sale of the road and franchises, I am willing to give up my objections to this stipulation, but I think it will be to the interest of both companies that your company shall directly attend to the payment of these coupons instead of passing the funds through the hands of the treasurer of the C. & M. V. Co. Strike out all the provisos in regard to arbitration and leave all the parties in interest to their legal remedies before the courts. As it is important to both your company and the C. & M. V. Co. that the legal organization of the latter company be kept up, your company should make some provisions for the expense which this will entail, and should
216 make arrangements so that the expense be kept down to the lowest possible minimum. Officers in the employ of your company in the administration of the C. & M. V. road might act as officers of the C. & M. V. Co. at a nominal salary. I have thus given up nearly every stipulation for the protection of the minority interests of the shareholders of the C. & M. V. R. Co., placing my interest entirely in your hands, and must look to you and your company to so arrange the affairs of the road as not to make me regret the confidence I have placed in you. I send copy of this to Mr. Jewett so that he may know my final decision in time for the meeting on the 9th instant.

Very truly yours,

(Signed) CHAS. MORAN.

The lease should express in clear language that the P., C. & St. L. Co. shall only look to the future earnings of the C. & M. V. road for the reimbursement of any advances it may make to meet the interest on the first-mortgage bond, and that they shall not have power to sell the road and franchises through any advances they may make for construction account.

(EXHIBIT 42.)

NEW YORK, *6th January*, 1873.

Messrs. M. Churchill & E. E. Fillmore, directors C. & M. V. R'y Co., Zanesville, O.

DEAR SIRS: On Saturday I received a telegram from Mr. Scott asking me to decide in regard to the terms of the lease, to which I made no reply, in the hope of getting an answer from you. Not hearing from you, I wrote to-day the letter of which the inclosed is a copy, but before sending it to the post office I received yours of the 1st inst., and this led me to add the postscript. The lease, as last proposed, distinctly states that the advances to be made by the lessees to meet the interest on the 1st-mortgage bonds shall be charged in open account to be returned out of subsequent earnings. This, it appears to me, is equivalent to the words used by Mr. Scott; but, if the language
217 is not sufficiently explicit let it be modified, and to that end I added the postscript after reading your letter. I have no faith myself in arbitraments. If they do not deal fairly with the C. & M. V. Co. we must appeal to the courts, and my letters to Col. Scott objecting to the lease will show conclusively what the intentions of the lease are, and as it is executed by a majority interest to themselves the court will hold them to a very strict accountability in regard to their actions under the lease. Any attempt to do us wrong under the lease can be readily checked by application to the courts. Col. Scott assured me several times that his company is as fully interested in developing the traffic and income of the C. & M. road as we are. I think very few railway companies raise money at less than 8% per annum, so that this rate stipulated for the equipment to be placed on the C. & M. V. is not an onerous one. Our main reliance must be on the vigilant supervision of the management of the road by the local directors and stockholders. The moment any important facts are discovered showing that our interests are sacrificed to any adverse interest, I am sure I can institute proceedings under the lease which will correct the wrong-doing and protect our interests. By arbitration I am convinced this result can never be attained. When we apply for redress to the courts the very fact that the majority made a lease of the road to themselves will be of great assistance to us. But I believe and trust that the P., C. & St. L. Co. will not attempt any wrong toward us, but be satisfied with the legitimate profits to be realized by the development of the traffic of the road. I shall at all times be glad to hear from you and to co-operate with you for the protection of our interests in the C. & M. V. Co.

Very truly yours,

(Signed) CH'S MORAN.

218 (EXHIBIT 49.)

NEW YORK, 20*th March*, 1873.

H. J. Jewett, Esq., Columbus, Ohio.

DEAR SIR: I am rather surprised at having received no advice of the final action in regard to the lease of the Cin'ti & Muskingum railway. If it was consummated, as I suppose it has been, I beg you will send me copy of the proceedings of the company and of the lease. How are the earnings this winter?

Very truly yours,

(Signed) CH'S MORAN.

(EXHIBIT 50.)

COLUMBUS, OHIO, *March* 24, 1873.

Charles Moran, Esq., New York city.

DEAR SIR: I am in the receipt of your favor of the 20th instant.

Your negotiations with regard to the lease being with Col. Scott, I being furnished only with copies of your letters to him as indicating your views, I naturally inferred you were being advised by him of the progress of the negotiations.

The original form of lease, being changed to conform to the understanding between yourself and Col. Scott, was approved by the stockholders of this company, but no action was had by the stockholders of the P., C. & St. L. Company until Tuesday last, when it was approved by them.

The lease will be printed, and you shall be furnished with some copies.

The road has been doing pretty well this winter, although it has suffered to some extent, with others, from the severity of the weather.

Very respectfully, H. J. JEWETT, *President.*

219 (EXHIBIT 1.)

PITTSBURGH, *Dec.* 30, 1873.

Messrs. Moran Bros., bankers, New York city.

GENTS: I hand you herewith inclosed check No. 1967 of Semple & Jones, on Manhattan Co. Bank, New York, for $52,500, to be placed to the credit of the Cincinnati and Muskingum R'y Co. for the purpose of paying the interest maturing January 1st proximo on the following-described bonds:

$1,500,000 first-mtg. bonds C. & M. V'y R'y Co., 7 per cent. per annum, $52,500.

Please receipt and return Dec. voucher No. 658, also herewith inclosed, for same.

Yours, etc., M. C. SPENCER, *Treasurer.*

(EXHIBIT 2.)

PITTSBURGH, PA., *June 29th*, 1874.

Messrs. Moran Bros., bankers, New York.

GENTS: I hand you herewith inclosed check No. 2 of W. H. Barnes, treasurer, on Winslow, Lanier & Co., for $52,500, to be placed to the credit of the coupon account of the Cincinnati and Muskingum R'y Co. for the purpose of paying the semi-annual interest, due July 1st prox., on $1,500,000 first-mortg. bonds of that company.

Please receipt and return June voucher No. 683 for same, also herewith inclosed.

Yours, etc., M. C. SPENCER, *Treasurer.*

(EXHIBIT 84.)

SECRETARY AND TREAS. OFFICE, ZANESVILLE, O.

Statement of Earnings and Expenses of the Cincinnati and Muskingum Valley Railway Co. for the Year Ending March 31, 1873.

220

Earnings.		
From freight	$324,863 22	
passengers	127,075 25	
express	16,301 63	
mail	10,895 62	
miscellaneous	13,339 63	
		$492,465 35
Expenses.		
Conducting trans'n	$80,547 00	
Motive power	112,464 56	
Maintenance of cars	29,686 73	
Maintenance of way	151,562 38	
General expenses	17,656 51	
		391,917 18
Net earnings		$100,548 17

ZANESVILLE, OHIO, *June* 30, 1874.

Chas. Moran, Esq.

DEAR SIR: Absence from my office has prevented my answering inquiries of yours of June 13th sooner.

I sent copy of lease some days since. Inclosed I hand statement of earnings and expenses for 1872 and 1873.

Below please find comparative statement of tonnage and passenger traffic:

Tons freight carried, 1872 and 1873	194,542
" " " 1873 and 1874	172,047
Decrease in 1873 and 1874	22,495

Passengers carried, 1872 and 1873	156,088.
" " 1873 and 1874	168,659
Increase, 1873 and 1874	12,571

There is no increase of conducting transportation. Am not conversant with detail in regard to maintenance of way, but some of the increase is on account damage caused by severe freshet last summer, which necessitated considerable expenditure on culverts, trestle-work, and bridges. For details I would refer you to auditor of P., C. & St. L. Co., where all the accounts of the company are kept.

Very respectfully yours, J. A. LIPPINCOTT,
Sec'y and Treas.

221 (EXHIBIT 3.)

PITTSBURGH, PA., *Dec.* 30, 1874.

Messrs. Moran Brothers, bankers, New York city.

GENTS: I hand you herewith inclosed check No. 4199 on the Fourth National Bank of New York for $52,500, to be placed to the credit of the coupon account of the Cincinnati & Muskingum Valley R'y Co. for the purpose of paying the semi-annual interest maturing January 1st prox. on the first-mortgage bonds of that company.

$1,500,000 at 3½ per cent. $52,500.

Please sign and return inclosed December voucher, No. 614, for same at your earliest convenience.

Yours, etc., M. C. SPENCER, *Treas.*

Mail 11.30 a. m.

(EXHIBIT 4.)

PITTSBURGH, *Dec.* 31, 1874.

Moran Bros., bankers, N. Y.:

Sent you on the thirtieth check for payment at C. & M. V. R. R. Co., interest due on the first prox. Has it come to hand?

M. C. SPENCER.

(EXHIBIT 5.)

PITTSBURGH, PA., *June* 29, 1875.

Messrs. Moran Bros., bankers, New York.

GENTS: I hand you herewith inclosed check No. 30 of W. H. Barnes, treasurer, on Winslow, Lanier & Co. for $52,500, to be placed to the credit of the coupon account of the Cincinnati & Muskingum Valley R'y Company for the purpose of paying the semi-annual interest maturing July 1st prox. on the first-mortgage bonds of that company, as per June voucher No. 606, also herewith inclosed.

Please receipt and return at your earliest convenience.

Yours, etc., M. C. SPENCER, *Treas.*

$1,500,000 at 3½ per cent. $52,500.

222 (EXHIBIT 6.)

PITTSBURGH, PA., *Dec.* 29, 1875.

Moran Bros., bankers, New York.

GENTS: I hand you herewith inclosed check No. 6218 of Semple & Jones on Fourth National Bank of New York for $52,000, to be placed to the credit of the Cincinnati & Muskingum V'y R'y Co. for the purpose of paying the semi-annual interest maturing Jan'y 1st prox. on $1,500,000 of the first-mortgage bonds of that company at 7 per cent. per annum.

Please receipt and return inclosed voucher (Dec., 384) for same at your earliest opportunity.

Yours truly, C. M. SPENCER, *Treas.*

(EXHIBIT 7.)

PITTSBURGH, PA., *Dec.* 30, 1875.

Moran Bros., bankers, N. Y.:

Have sent you check for interest due Jan'y first prox. on Cin'ti & Musk. Valley R. W. Co. bonds? Answer when received.

M. C. SPENCER.

(EXHIBIT 8.)

PITTSBURGH, PA., *June* 29, 1876.

Messrs. Moran Bros., bankers, New York.

GENTS: I hand you herewith inclosed check No. 7213 on Fourth National Bank of New York for $52,500, to be placed to the credit of the coupon account of the Cincinnati & Muskingum Valley R'y Co. for the purpose of paying the semi-annual interest maturing July 1st prox. on the first-mortgage bonds of that company.

$1,500,000 at 3½ per cent. $52,500.

Please sign and return inclosed June voucher, No. 332, for same at your earliest convenience.

Yours, etc., M. C. SPENCER, *Treas.*

223 (EXHIBIT 9.)

PITTSBURGH, PA., *July* 5, 1876.

Moran Bros., bankers, New York:

June twenty-ninth I sent you check for fifty-two thousand five hundred dollars for interest on Cincinnati & Muskingum Valley R'y bonds. Have you received it? Please answer.

M. C. SPENCER.

(EXHIBIT 11.)

PITTSBURGH, PA., *July* 6, 1876.

Messrs. Moran Bros., bankers, New York.

GENTS: On the 29th of June I sent you draft on New York and

voucher for $52,500 for interest due July 1st on C. & M. V'y R'y Co.'s bonds, with request you receipt the voucher and return to me.

This morning I received your telegram stating that it had been received and returned June 30th ult. It has never come to hand. Perhaps it might not have been addressed correctly. If you can ascertain in any way and let me know I will be under obligation.

The loss of the voucher places me in rather an embarrassing situation, as I cannot obtain credit for the payment unless I have your receipt.

Could you have sent it to Zanesville?

Yours, etc., M. C. SPENCER, *Treas.*

(EXHIBIT 10.)

PITTSBURGH, PA., *July* 27, 1876.

Messrs. Moran Brothers, bankers, New York.

GENTS: Your favor of the 8th inst. came duly to hand. I have delayed answering, thinking perhaps the lost voucher might turn up.

224 I herewith inclose a duplicate. Please sign and return. Should the original be found and come into my possession I will destroy the duplicate and advise you.

Yours truly, M. C. SPENCER, *Treasurer.*

(Mail.)

(EXHIBIT 52.)

NEW YORK, 27*th Oct.*, 1876.

Thos. D. Messler, Esq., pres't C. & M. V. Co., Pittsburgh.

DEAR SIR: I arrived here on 25th inst. per steamer "Scythia," and shall be glad to learn what are the present conditions and future prospect of our Co. I trust that, with due economy in its administration, being entirely a local road and hence not subject to the severe competition existing between the great lines of transportation, it will soon present better net results than in the past years.

Very truly yours,

(Signed) CHAS. MORAN.

(EXHIBIT 53.)

PITTSBURGH, PA., *Oct.* 30, 1876.

Charles Moran, Esq., New York.

DEAR SIR: I have your favor of the 27th inst. I regret to say that the results of the operating of this company's road by the lessee do not show even as favorable as they did last year. It was in view of this circumstance that the stockholders at their last annual meeting voted for an abrogation of the lease, believing that better results would be obtained if the road were operated by the company. At the instance of Messrs. Moran Bros., who stated it was in accordance

with your desire, definite action has been postponed toward carrying out the wishes of the stockholders till you returned from Europe. If you have anything to say on the subject I shall be glad to have you communicate it. The P., C. & St. L. R'y Co., at the last
225 meeting of its directors, signified its willingness to surrender the lease, taking the obligation of this company for the advances heretofore made on its account.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 54.)

PITTSBURGH, PA., *Nov.* 3, 1876.

Charles Moran, Esq., New York.

DEAR SIR: I have your favor of the 1st inst. In accordance with your request I hand you herewith a statement showing the comparative earnings, under their respective heads of account, for the first nine months of 1875 and '76; also the expenses, together with the tonnage, ton mileage, rate per ton per mile, and mileage per ton for the same periods. From this you will perceive that the large decrease ($26\frac{15}{100}\%$) in the freight earnings arises from three causes—first, a reduced tonnage of $6\frac{1}{3}\%$; second, a reduced rate of $7\frac{72}{100}\%$, and, third, a reduced mileage per ton of $17\frac{37}{100}\%$.

The vote to abrogate the lease was not confined to the stock owned by the Penna. Co. (not P., C. & St. L. R'y Co., as you state it). On the contrary, several of the individual stockholders, who happened to be present at the meeting, also voted for it. We should have been glad to have your vote recorded in favor of the proposition, but as you were unable to be present we shall be pleased now to have your co-operation in consummating it.

Yours truly, THOS. D. MESSLER, *President.*

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OFFICE OF THE AUDITOR,
PITTSBURGH, PA., *Oct.* 30, 1876.

Statement showing the earnings and expenses of C. & M. V. railway for nine months ending Sept. 30, 1876, as compared with same period of 1875.

Earnings.	1876.	1875.	Increased.	Decreased.
				$26\frac{15}{100}\%$
From freights	$136,946 80	$185,443 23		$48,496 43
" passengers	76,862 18	91,494 10		14,631 92
" express	2,623 91	3,187 15		563 24
" mails	8,403 75	8,403 75		
" rents	587 50	598 00		10 50
" miscellaneous	250 90	199 05	51 85	
Totals	$225,675 04	$289,325 28		$63,650 24
Expenses.				
For C. T.	$54,851 89	$57,122 22		$2,270 33
" M. P.	67,222 30	73,584 15		6,361 85
" M. of W.	98,337 15	100,414 77		2,077 62
" M. of C.	19,029 70	16,367 61	$2,662 09	
" G. E.	9,891 03	11,193 02		1,301 99
Totals	$249,332 07	$258,681 77		$9,349 70

Statement showing number of tons transported and number of tons transported one mile over the C. & M. V. railway for nine months ending Sept. 30, 1876, as compared with 1875.

	No. tons transported.		*No. tons transported one mile.*
1876	130,540		6,030,460
1875	139,359		7,706,368
Decrease (6 1/3 %)	8,819	Decrease (21 3/4 %)	1,675,908

	Rate per ton per mile.		*Mileage per ton.*
1876	2 27/100 cents.		46 37/100 miles.
1875	2 46/100 "		56 "
Decrease	7 72/100 %	Decrease	17 37/100 %

227 (EXHIBIT 55.)

NEW YORK, 6*th Nov.*, 1876.

Thos. A. Scott, Esq., pres't Pennsylvania R. R. Co., Philadelphia.

DEAR SIR: I have just returned from Europe after an absence of five months. While absent I was informed that there was a project to abrogate the lease of the Cin'ti & Mus'm Valley railway to the P., C. & St. L. Co. May I ask you to state to me what has been done and what is intended to be done on this subject and the motives that lead to this action? The results obtained from the traffic of the road since its management by the lessees are sad, indeed, but you will remember that this was the very result I feared when I found that the road was to be run for the benefit of other interests than those of the bondholders and stockholders of the C. & M. V. R'w'y Co., and you know it was this conviction on my part that led you to assent to the stipulation in the lease that the lessees should pay the coupons on the 1st-mortgage bonds of the C. & M. V. Co., whether earned or not, from the traffic of the road, as the road could only hope for such traffic and such rates as the lessees would permit the road to obtain.

Very truly yours,
(Signed) CHAS. MORAN.

(EXHIBIT 56.)

PITTSBURGH, PA., *Nov.* 20, 1876.

Charles Moran, Esq., New York.

DEAR SIR: Under the date of the 3d inst. I sent you the information relative to the business of this company's road asked for in your favor of the 1st, preparatory to your making a definite reply to my respects of the 30th ult., in which I stated that, at the instance of Messrs. Moran Bros., who stated it was in accordance with your desire, definite action has been postponed till you returned from Europe toward carrying out the wishes of the stockholders relative to
228 the cancellation of the lease of the road to the P., C. & St. L. R'y Co. If you have any views to express on this subject, as I have been led to infer you have, I should be very glad to

hear and consider them before taking the requisite steps to execute the wish of the stockholders, which I propose now to do as of January 1st next, that being the termination of a lease year.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 57.)

NEW YORK, 22*d Nov.*, 1876.

Thos. D. Messler, Esq., Pres. Cin. & Mus. Valley R'w'y Co., Pittsburgh.

DEAR SIR: Your favor of the 20th inst. came to hand this morning. Before I can assent to the cancellation of the lease of the C. & M. Valley railway to the P., C. and & St. L. R'y Co. I desire to know the reason for doing so and what arrangements are proposed in regard to the future administration of the road. As long as the company and its property is controlled by the Penna. Co., whether it be managed by directors and officers appointed by the Pennsylvania Co. or by the P., C. & St. L. Co.—the latter being controlled by the former—the C. & M. V. road will be administered in the interest of what is, beyond question, an adverse interest, and hence deprived of its natural income. If the C. & M. V. road has shown such unfavorable results during the past years it has been entirely due to the P., C. & St. L. Co., which, for reasons of its own, has prevented the natural development of the traffic of the C. & M. V. road and maintained unremunerative rates for the limited local traffic which alone it was permitted to obtain. Cancelling the lease will in no way change this unfavorable state of things, as the C. & M. V. road will still be controlled by the Pennsylvania Co. The unfavorable result of this condition of things was foreseen by me and talked over with all frankness with Thos. A. Scott, Esq., pres't of the Pennsylvania Co.; and to place a limit to the evil effects of the position
229 of the C. & M. V. road the lease stipulated that whether the earnings of the road under the management of the P., C. & St. L. Co. were sufficient or not the lessees should pay at maturity the coupons of the 1st-mortgage bonds of the C. &. M. V. Co. The object of the proposed cancellation of the lease appears to me to be to relieve the P., C. & St. L. Co. from the payment of these coupons, and to this I most earnestly protest as a shareholder and director of the C. & M. V. Co. and as holder of the 1st-mortgage bonds of that company. I have written to Pres't Scott to inquire what was intended to be done in this matter, and hope that, with his accustomed frankness and intelligence, he can point out some way in which the conflicting interests can be reconciled and the 1st-mortgage bonds of the C. & M. V. prevented from becoming worthless, to the great detriment of the Penn. Co. (which is still a large holder of them) as well as of myself and friends.

Very truly yours,

(Signed) CHAS. MORAN.

(EXHIBIT 57.)

NEW YORK, 12*th Dec.*, 1876.

Thos. A. Scott, Esq., Phila.

DEAR SIR: I inclose copy of letters written to you on 6th Nov. last and to Thos. D. Messler, pres. C. & M. V. Co., on 22d Nov., to neither of which have I ever received any reply. I know how much occupied your time must be, but the large interest I and my friends hold in the C. & M. V. R'w'y is my excuse for again calling your attention to this subject and begging you to inform me with your usual candor what your views and desires are in regard to the future of this unfortunate road. The non-payment of the coupons on the 1st-mortgage bonds will entirely destroy the value of those your company and we hold.

Very truly and sincerely yours,

(Signed) CHAS. MORAN.

230 (EXHIBIT 58.)

NEW YORK, 6*th Febr'y*, 1877.

Thos. A. Scott, Esq., pres. Penn. R. R. Co., Phila.

DEAR SIR: You will probably have heard ere this reaches you of the legal steps we have taken to prevent the cancellation of the lease of the Cin'ti & M. V. railway to the P., C. & St. L. Co. We have done this solely with a view to prevent sudden action on this matter in our absence and not at all with a view to litigation. I shall be ready and glad to meet you at any time to consult on the future of this unfortunate road, which I think has never been granted the least chance to develop even its local traffic.

Very truly yours,

(Signed) CHAS. MORAN.

NEW YORK, 6*th Febr'y*, 1877.

Thos. D. Messler, pres. Cin. & Muskingum Valley R'y Co., Pittsburgh:

Will assent to any postponement you may desire; have already consented to one week's adjournment and written to Pres't Scott on the subject; have none but the most friendly dispositions; only desire not to have any sudden action on your part.

(Signed) CHAS. MORAN.

(EXHIBIT 12.)

PITTSBURGH, PA., *Dec.* 29, 1876.

Messrs. Moran Bros., bankers, New York.

GENTS: I hand you herewith inclosed check No. 8146 of Semple & Jones on the Fourth National Bank of New York for $52,500, to be placed to the credit of the Cincinnati & Muskingum Valley R'y Company, to be applied to the payment of the semi-annual interest

due Jan'y 1st prox. on $1,500,000 first-mortgage bonds of that company.

Please sign and return Dec. voucher, No. 301, for same amount, also herewith inclosed.

Yours truly, M. C. SPENCER, *Treas.*

231 (EXHIBIT 10.)

PITTSBURGH, PA., *Dec.* 30, 1876.

Moran Bros., bankers, N. Y.:

Mailed you check last evening for C. & M. V. R'y Co., interest due January first prox. Telegraph when received.

M. C. SPENCER.

(EXHIBIT 59.)

PITTSBURGH, PA., *Feb.* 6, 1877.

Chas. Moran, 68 William St., N. Y.:

I have just received notice of your bill of complaint against C. & M. V. R'y Co. at Cincinnati. The intention of all parties was to suspend further proceedings at the coming meeting of P., C. & St. L. R'y Co. board, and I have no doubt such action will be had next Thursday or Friday. In view of this I should like very much to have you instruct your counsel to suspend action on the bill till the parties can formally act, of which I will promptly advise you Answer.

THOS. D. MESSLER, *Pres't.*

(EXHIBIT 60.)

FEBRUARY 6, 1877.

Thos. D. Messler, pres'd't Cin. & Muskingum Valley Railway Co., Pittsburgh:

Will assent to any postponement you may desire; have already consented to one week's adjournment and written to Pres't Scott on the subject; have none but the most friendly disposition; only desire not to have any sudden action on your part.

CHAS. MORAN.

(EXHIBIT 61.)

PITTSBURGH, PA., *Feb.* 7, 1877.

Chas. Moran, 68 William St., N. Y.:

Your message received. I was only waiting formal action
232 by P., C. & St. L. Co. board to notify you of a suspension of the whole subject. I will rely on your having instructed your counsel to consent to stay of proceedings under your bill.

THOS. D. MESSLER, *Pres't.*

(EXHIBIT 62.)

PHILADELPHIA, *Feb.* 9, 1877.

Chas. Moran, 68 William St., N. Y.:

P., C. & St. L. R'y Co. board to-day directed all proceedings in the matter under consideration to be suspended; will send you certified copy of resolution on Monday, when I shall have returned to Pittsburgh.

THOS. D. MESSLER.

(EXHIBIT 64.)

PITTSBURGH, PA., *Feb.* 12, 1877.

Chas. Moran, Esq., 68 William St., New York.

DEAR SIR: In accordance with my telegram of Friday last I inclose you herewith a certified copy of the order of the board of directors of the Pittsburgh, Cincinnati & St. Louis R'y Co. on that day in regard to the proposed cancellation of the lease of the Cin. & Muskingum Valley railway. This will, I trust, warrant you in withdrawing the legal proceedings pending at Cincinnati in the U. S. circuit court for an injunction against this company in this matter.

I expect to be in New York the latter part of this week, when I will endeavor to call on you with a view of conferring on the subject of the appointment of a trustee under the present mortgage of the company in place of J. Edgar Thompson, dec.

Yours truly, THOS. D. MESSLER, *President.*

PITTSBURGH, PA., *Feb.* 12, 1877.

At a special meeting of the board of directors of the Pitts-
233 burgh, Cincinnati & St. Louis R'y Co. held at the office of the Penna. R. R. Co., in the city of Philadelphia, on Friday, February 9, 1877, the following action was had:

The matter of the cancellation of the lease of the Cincinnati & Muskingum Valley R'y being brought before the board, it was ordered that further proceedings in pursuance of the action heretofore taken be suspended.

Certified from the minutes.

FRANK SEMPLE, *Ass't Sec'y.* [SEAL.]

To Thos. D. Messler, Esq., president C. & M. V. R'y Co.

(EXHIBIT 63.)

PITTSBURGH, PA., *Feb.* 14, 1877.

Chas. Moran, 68 William St., N. Y.:

Have you received my letter of twelfth inst.? If so, what reply do you make? Stay of proceedings at Cincinnati expires to-morrow. Will you instruct your counsel to withdraw the suit. I will see you Friday afternoon.

THOS. D. MESSLER.

(EXHIBIT 66.)

NEW YORK, *Feb.* 20, 1877.

Thos. D. Messler, Esq., pres. Cin. & Mus. Valley R'y Co., Pittsburgh, Pa.

DEAR SIR: I confirm my letter of yesterday, and, in accordance with my promise, now inclose the form of a deed of further assurance from your company, upon the return of which, duly executed, after proper resolutions of your board of directors and the remittance of $500 for counsel fees and costs (as per copy inclosed of letter from F. A. Lane, my counsel), I shall at once discontinue the legal proceedings instituted at Cin. and assent to the appointment of any person you may desire as trustee of the first mortgage in the place of J. Edgar Thompson, deceased. This discontinuance of legal proceedings is based on your assurances that nothing further will be done by your company to affect the future payments of in-
234 terest on the first-mortgage bonds of your company as stipulated in the lease of your road to the P., C. & St. L. Railway Co.

Very truly yours,
(Signed) CHAS. MORAN, *Trustee, etc.*

(EXHIBIT 67.)

PITTSBURGH, PA., *Feb.* 23, 1877.

Chas. Moran, Esq., New York.

DEAR SIR: Your favor of the 20th inst., with inclosure, was duly received in my absence.

You will understand, of course, that the execution of the deed of further assurances that your request can only be had after proper resolutions authorizing the same have been passed by our board of directors. There will be some delay in obtaining such authority. Our annual meeting does not take place until the second Tuesday in June, and I had not thought it worth while to call the board together before that time. I suppose that you will have no objections to allow the matter at issue to remain until then *in statu quo*. If you will so consent will you please direct a continuance of the suit at Cincinnati till such action can be had. I believe the continuance heretofore ordered expired yesterday.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 68.)

NEW YORK, *Feb.* 26, 1877.

Thos. D. Messler, Esq., pres. Cin. & Mus. V'y Railway Co., Pittsburgh.

DEAR SIR: Your favor of 23d inst. is at hand. I have no objection to await your convenience in regard to the execution of the deed of further assurance, and have given instructions to have the

suit at Cincinnati postponed for a month, and will then assent to a further continuance so as to maintain the *statu quo* until you can have a meeting of your board. I think, however, my counsel, Mr. Lane, would be much pleased if you would remit me the $500 for his fees and costs.

Very truly yours,

(Signed) CHAS. MORAN,
Trustee 1st Mtge.

(EXHIBIT 69.)

NEW YORK, *April* 2, 1877.

Thos. D. Messler, Esq., pres. Cin. & Mus. V'y Railway Co., Pittsburgh, Pa.

DEAR SIR: I confirm my last of 26th February, advising the continuance of the suit at Cincinnati for thirty days, since which I have not received any of your favors. In accordance with my promise I have given instruction for a further continuance of the suit for thirty days more, as I suppose nothing new has occurred in regard to the execution of the deed of further assurance from your company.

How are the earnings of the road since 1st January? Have they improved as you expected when you were here?

Very truly yours,

(Signed) CHAS. MORAN,
Trustee 1st M'tg'e.

(EXHIBIT 70.)

PITTSBURGH, PA., *April* 14, 1877.

Chas. Moran, Esq., New York.

DEAR SIR: Your favor of the 2d inst. was duly received during my absence.

After full consultation with our counsel it is deemed unnecessary to execute the deed of further assurance, the form of which you have heretofore inclosed to me. It is also considered improper for us to pay the costs of the suit instituted at Cincinnati.

I am pleased to inform you that my expectations, when last in New York, with reference to an increase in the earnings of the C. & M. V. R. R. are being fulfilled. The earnings during March ult. were $29,776.68, which is an increase of $4,799.70, or 19.22 per cent. The earnings, during the first quarter of this year were $91,073.87, an increase of $12,468.65, or 15.86 per cent. The net earnings, during this latter period were increased from $1,509.66 to $15,828.51.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 71.)

NEW YORK, 21*st April*, 1877.

Thos. D. Messler, Esq., pres. Cin'ti & Muskingum V. R'y Co., Pittsburgh, Pa.

DEAR SIR: Your favor of 14th inst. was duly received, but am surprised and disappointed at its contents. The attempt to cancel the lease of the C. & M. V. road to the P., C. & St. L. Co. certainly rendered it necessary for me, as trustee of the 1st m't'ge of the C. & M. V. R'y Co., to take steps to prevent this and to obtain from your Co. the deed of further assurance in accordance with the terms of the trust deed of J. Edgar Thomson and myself. After full consultation with my counsel it is deemed necessary that your Co. execute the deed of further assurance, the form of which I inclosed to you in one of my former letters. If your Co. refuse to give it I shall be forced to apply to the court for its execution, which I shall greatly regret, as it will give trouble and expense to both parties and give publicity to that which had better be kept between the parties. Of course, when sustained by the court in my proceedings to obtain this deed of further assurance, the court will decree me costs and expenses, the sole reason why I claimed the fees and costs of my counsel. I shall await your reply to this before taking any new legal steps in this matter, trusting that upon mature reflection your counsel and board of directors will prefer to settle this matter amicably rather than have it brought into the courts.

Your early reply to this will much oblige, yours truly,

(Signed) CH'S MORAN,
Trustee 1*st M'tg'e.*

237 (EXHIBIT 72.)

PITTSBURGH, PA., *April* 25, 1877.

Chas. Moran, Esq., New York.

DEAR SIR: Your favor of the 21st inst. was duly received.

After further consideration of the subject in question it is deemed inexpedient to modify the views thereon expressed in my respects of the 14th inst.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 73.)

NEW YORK, 30*th April*, 1877.

Thos. D. Messler, Esq., pres. Cin'ti & Mus. V. R'way Co., Pittsburgh, Pa.

DEAR SIR: I duly received your favor of 25th inst. Is it to the form of the deed of further assurance that I forwarded you that you object, or is it that your Co. has decided not to execute any such deed at all? By reference to the mortgage you will see that it stipulates "to execute and deliver any further suitable conveyance or convey-

ances that may be requisite for carrying into effect the object of the m'tg'e." If you only object to the form of the deed I forwarded I shall be glad to receive from you the form of deed which your counsel may draw up in accordance with the views of your Co.

Very truly yours, CH'S MORAN,
Trustee 1st M'tg'e.

(EXHIBIT 74.)

PITTSBURGH, PA., *May* 5, 1877.

Chas. Moran, Esq., New York.

DEAR SIR: Your favor of the 30th ult. was duly received in my absence.

No particular objection was made by our counsel to the
238 form of deed of further assurance which you forwarded to me. His objection was to the company executing any such deed at all, for the reason that it was unnecessary and would simply be a repetition in another form of the provisions contained in the original mortgage.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 75.)

NEW YORK, *May* 8, 1877.

Thos. D. Messler, Esq., pres. Cin'ti & Mus. Val. Railway Co., Pittsburgh, Pa.

DEAR SIR: Your favor of 5th May was duly received. As your counsel does not object to the form of the deed of further assurance which I sent you, I will postpone all legal action until after the annual meeting of your board in June, as you requested in your favor of 23d February last, trusting that, upon further reflection, you, your counsel, and the board will at that meeting authorize the execution of that instrument, and thus settle the matter amicably without the intervention of the courts, which, I think, exceedingly preferable for all parties in interest. In meantime matters will remain *in statu quo.* Your counsel will inform you, I am confident, that, on application to the court, I can obtain an order to enforce the execution of the deed of further assurance stipulated in the deed. In this matter I desire not to place myself in antagonism to your Co., but merely protect the interests of the trust of which I am the sole surviving trustee.

Very truly yours,
(Signed) CHAS. MORAN, *Trustee, etc.*

(EXHIBIT 88.)

This indenture, made this — day of February, one thousand eight hundred and eighty-seven, by and between the Cincinnati and Muskingum Valley Railway Company, a corporation created
239 by and existing under the laws of the State of Ohio, party of the first part, and Charles Moran, of the city, county, and State of New York, party of the second part, witnesseth:

Whereas heretofore the said railway company, party hereto of the first part, made and executed and delivered to one J. Edgar Thomson, then of Philadelphia, in the State of Pennsylvania, and to said Charles Moran, party hereto of the second part, its certain deed of trust and mortgage, bearing date the first day of September, in the year one thousand eight hundred and seventy, whereby it did grant, bargain, sell, and convey to the said J. Edgar Thomson and said Charles Moran, as joint tenants, and to the survivor of them, his heirs and assigns, all the right, title, and interest of the said party of the first part thereto in and to the railroad of the said Cincinnati and Muskingum Railway Company, extending from the town of Morrow to a point at or near the town of Dresden, hereinabove described, situated and being in the counties of Warren, Clinton, Fayette, Pickaway, Fairfield, Perry, and Muskingum, with the appurtenances now completed or hereafter to be constructed, together with all the lands, tenements, hereditaments, fixtures, buildings, cars, engines, tools and machinery, franchises, privileges, interest, and estate of the said railway company appertaining thereto which the said railway company then possessed and owned or might thereafter acquire;

And whereas said mortgage or deed of trust contained a covenant and agreement on the part of the said Cincinnati and Muskingum Valley Railway Company by which it covenanted to execute and deliver any suitable conveyance or conveyances that might be requisite for carrying into effect the object of those presents, particularly for the more perfect assurance of any property thereafter acquired by the said railway company and included in the description in said deed of trust or mortgage;

And whereas since the execution of said deed of trust or mortgage the said J. Edgar Thomson died, and no person has been substituted in his place as a trustee under said deed of trust or mortgage;
240 but said Charles Moran has since been and still continues to be the sole surviving trustee thereunder in pursuance of the terms and conditions and provisions of the said mortgage;

And whereas since the making, execution, and delivery of said deed of trust or mortgage the said Cincinnati and Muskingum Valley Railway Company has acquired other property, rights, privileges, and franchises, and is desirous to execute and deliver to said surviving trustee a further suitable conveyance for the purpose of more fully carrying into effect the object thereof, particularly for the more perfect assurance to him, said trustee, of such after-acquired property, rights, privileges, and franchises:

Now, therefore, in consideration of one dollar to it in hand paid, the receipt of which is hereby acknowledged, and in order faithfully to carry out its obligations in said deed of trust and mortgage contained, the said Cincinnati and Muskingum Valley Railway Company have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Charles Moran, sole surviving trustee as aforesaid, all its property, rights, privileges, and franchises acquired since the making, execution, and delivery of said mortgage or deed of trust; to have and to hold

the same, nevertheless, to and for the uses, purposes, and trusts as in said mortgage or deed of trust set forth, to which mortgage or deed of trust reference is hereby made.

In witness whereof the said Cincinnati and Muskingum Valley Railway Company, the party hereto of the first part, has caused its corporate seal to be hereunto set and affixed, attested by its president and secretary, the day and year first above written.

——, ——.

Sealed and delivered in presence of—

——, ——.

241 (EXHIBIT 15.)

PITTSBURGH, PA., *Dec.* 30, 1878.

Messrs. Moran Bros., bankers, 68 William street, New York.

GENTS: I hand you herewith inclosed draft No. 1637 of Wm. H. Barnes, treasurer, on the Third National Bank of New York for $26,180, to be placed to the credit of the coupon account of the Cincinnati & Muskingum Valley R'y Co. for the purpose of paying the semi-annual interest due January 2, 1879, on the first-mortgage bonds of that company.

Please sign and return inclosed receipt for same, and also notify Mr. C. C. Wats, treasurer, of Zanesville, O.

Yours truly, M. C. SPENCER, *Treas.*

(EXHIBIT 14.)

PITTSBURGH, PA., *Dec.* 31, 1878.

Mess. Moran Bros., bankers, 68 William St., N. Y.:

Sent you yesterday draft for interest on Cincinnati & Muskingum Valley R'y Co. first-mortgage bonds. Please wire receipt.

M. C. SPENCER.

(EXHIBIT 76.)

NEW YORK, *Feb.* 19, 1880.

Thos. A. Scott, Esq., Philadelphia.

DEAR SIR: In these days of revival of the values of all our broken-down old railroads cannot something be done to give value to our unfortunate Cin. & Mus. V. R. R. bonds and shares? A road as centrally located as this road, in the hands of a company that controls so large a share of the transportation traffic of the country as the Penna. R. R. Co., ought to earn a fair income, particularly as it should have a heavy coal traffic from the valuable coal mines in its vicinity. The old New Albany & Salem road, whose shares sold as low as 10 per cent. a year or two ago, has just been
242 purchased by the Louisville & Nashville pool, and the shares are now selling at 100. All the poor bankrupt railroads are daily improving in their traffic and in value of their shares and securities except our unfortunate C. & M. V. R. R. Surely this

Whereas heretofore the said railway company, party hereto of the first part, made and executed and delivered to one J. Edgar Thomson, then of Philadelphia, in the State of Pennsylvania, and to said Charles Moran, party hereto of the second part, its certain deed of trust and mortgage, bearing date the first day of September, in the year one thousand eight hundred and seventy, whereby it did grant, bargain, sell, and convey to the said J. Edgar Thomson and said Charles Moran, as joint tenants, and to the survivor of them, his heirs and assigns, all the right, title, and interest of the said party of the first part thereto in and to the railroad of the said Cincinnati and Muskingum Railway Company, extending from the town of Morrow to a point at or near the town of Dresden, hereinabove described, situated and being in the counties of Warren, Clinton, Fayette, Pickaway, Fairfield, Perry, and Muskingum, with the appurtenances now completed or hereafter to be constructed, together with all the lands, tenements, hereditaments, fixtures, buildings, cars, engines, tools and machinery, franchises, privileges, interest, and estate of the said railway company appertaining thereto which the said railway company then possessed and owned or might thereafter acquire;

And whereas said mortgage or deed of trust contained a covenant and agreement on the part of the said Cincinnati and Muskingum Valley Railway Company by which it covenanted to execute and deliver any suitable conveyance or conveyances that might be requisite for carrying into effect the object of those presents, particularly for the more perfect assurance of any property thereafter acquired by the said railway company and included in the description in said deed of trust or mortgage;

And whereas since the execution of said deed of trust or mortgage the said J. Edgar Thomson died, and no person has been substituted in his place as a trustee under said deed of trust or mortgage;
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the same, nevertheless, to and for the uses, purposes, and trusts as in said mortgage or deed of trust set forth, to which mortgage or deed of trust reference is hereby made.

In witness whereof the said Cincinnati and Muskingum Valley Railway Company, the party hereto of the first part, has caused its corporate seal to be hereunto set and affixed, attested by its president and secretary, the day and year first above written.

——— ———.

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242 purchased by the Louisville & Nashville pool, and the shares are now selling at 100. All the poor bankrupt railroads are daily improving in their traffic and in value of their shares and securities except our unfortunate C. & M. V. R. R. Surely this

ought not to be the case. Is it not the evident interest of your company that a share of the traffic it controls in that direction should go over the C. & M. V. road so as to give value to the $752,000 first-mortgage bonds and to the shares which it owns? The large increase of traffic which the new Cin. Southern R. R. will shortly bring to Cincinnati ought alone be sufficient to give an increase of traffic to the C. & M. V. road that would make it a dividend-earning road if properly managed and the local traffic encouraged. Certainly this property is too valuable to be permitted to remain forever in its present sad condition, and I hope you will find some way in making it share in the prosperity enjoyed by all your other leased roads, many of them not as well located for traffic as the C. & M. V.

Believe me, very truly yours,

(Signed) CHAS. MORAN.

(EXHIBIT 77.)

PHILADELPHIA, *February* 20, 1880.

Mr. Charles Moran, 68 William St., New York city.

MY DEAR SIR: I have your favor of the 19th inst., in regard to the Cincinnati & Muskingum Valley road. I agree with you that if proper arrangements were made a valuable coal traffic could, no doubt, be secured to this line through the extension of the Sunday Creek Valley road, and would suggest in that connection that it would be a very desirable thing if you could interest some responsible party in Cincinnati in this matter, and secure through him the placing of about 120 twenty-ton coal cars on this line. The policy of the Hocking Valley people heretofore has always been to carry their coal to Columbus, but with the openings of the new line a portion of the traffic can very readily be diverted to Cincinnati.

243 No doubt you are aware that the road has taken care of all the interest on its bonds for the past year. In regard to the stock matter, I do not see that anything specially can be done to increase its market value. Of course we are willing at any time to co-operate in anything that may have that result.

It has occurred to me that perhaps you might desire, now that it is in a condition to take care of its bonds, to put the lease into shape where it could be terminated on six months' notice from either party, so that if you should see your way clear at any time to look especially after a stock interest in the line it will be in your power to do so.

I shall be glad to have your views upon this point or any other that may have some interest to you.

Very truly yours, THOMAS A. SCOTT,
Pres. P., C. & St. L.

(EXHIBIT 78.)

NEW YORK, *Feb.* 24, 1880.

Thos. A. Scott, Esq., pres. P., C. & St. L. R'y Co., Philadelphia.

DEAR SIR: I am in receipt of your favor of 20th inst. Are you

not far better placed than I am to induce Cincinnati parties to place coal cars on the C. & M. V. road? You can offer them favorable terms as to facilities of handling the cars and as to rates, whilst I am not in a position to say or offer anything in regard to this important matter. Your company could also no doubt readily induce the Hocking Valley coal shippers to send a portion of their coal to Cincinnati by a favorable contract for its transportation, and there must be many other means by which the business of the road could be profitably increased by some efforts on the part of your company. I am gratified to learn that the road with its present very limited traffic has been able to take care of all the interest on its bonds for the past year. This is conclusive evidence that it would be
244 easy to make it earn dividends on its shares by obtaining a share of the large additional traffic that will shortly be brought to Cincinnati by the Southern R. R. Co., which I see was to have been opened for traffic last Monday. This and a portion of the coal traffic, with the constantly increasing local traffic, ought to enable the managers to earn some dividends for the shares. It surely cannot be indifferent to the Penna. Co. whether its large interest in the C. & M. V. Co. be productive or unproductive; and a portion of your large through freight traffic to and from Cincinnati and the East can certainly be done advantageously over the C. & M. V. R. R. to the relief of the heavy traffic which now must test the full power of the line via Columbus, where it encounters the further incumbrance of the Cleveland traffic. As to giving my assent to the modification of the present lease to your company of the C. & M. V. road so as to permit its termination on six months' notice, I cannot see how this would in any way benefit the C. & M. V. shareholders or bondholders. Your company, or rather the Pennsylvania Co., own the majority of the shares, and hence as shareholders would control the management of the road just as full as it does now by its lease to your company, whilst the bondholders would be deprived of the guarantee of your company for the prompt payment of the coupons. I cannot believe that there can ever truly exist an antagonistic interest between the Penna. Co.—the P., C. & St. L. Co.—and the shareholders of the C. & M. Valley Co. You and your board of directors are too intelligent to believe that it is ever politic to sacrifice the vast future of a railroad for a mere momentary, trifling, apparent advantage. The interests you represent are those I represent; both need the same course of action now and hereafter—*i. e.*, it is to the interest of all parties that the traffic of the Cin. & M. V. R'y be developed to the greatest possible extent. To the P., C. & St. L. Co., as well as to the Pennsylvania Co., every mile of the C. & M. V. road is just as much their road as it is the road of the C. & M. V. shareholders; hence it is just as much the interest of the two companies you represent to have the Cin. & M. V.
245 road made productive as it is that their own roads be made productive; and the development of the traffic of the C. & M. V. road cannot fail to contribute to the further development of the traffic of the P., C. & St. L. Co. and the Penna. Co.

Very truly yours,

(Signed) CHAS. MORAN.

(EXHIBIT 79.)

PITTSBURGH, PA., *March* 15, 1883.

Chas. Moran, Esq., 68 William St., N. Y.

DEAR SIR: I believe you are familiar with the facts concerning the reorganization of the late Cincinnati & Zanesville R. R. Co. I have occasion to ascertain just what was done with the stock of that company in this reorganization.

I find that the C. & M. V. Co. issued to Thomas L. Jewett, from whom they purchased the road, 71,473 shares of their stock, but what he did with it I am not informed. I suppose he used it in settling with the creditors and possibly the stockholders of the C. & Z. R. R. Co. Can you give me any information on this subject, particularly whether the stock of the C. & Z. R. R. Co. was recognized in any way by the C. & M. V. Co.; and, if so, to what extent?

I do not find any one here who is sufficiently familiar with the facts in the case to give me the information I need or else I would not trouble you in the matter.

Yours truly, THOS. D. MESSLER, *President.*

(EXHIBIT 80.)

NEW YORK, 17*th March*, 1883.

Thos. D. Messler, Esq., pres't Cincin'ti & Muskingum Valley R'way Co., Pittsburgh, Pa.

DEAR SIR: Your favor of 15th inst. was received this morning.

246 The organization of the Cinc'ti & Muskingum Valley R'way Co. took place in 1870, and it is difficult to bring back to memory the details of business matters that occurred at such a distant period of time; but, looking over some old papers, I found a statement of subscriptions to capital stock of that Co., in which the authorized capital stock is stated at $4,000,000, of which—

$401,350	individual subscriptions.
25,000	city of Zanesville subscription.
2,218,400	Pennsylvania R. R. Co.
1,327,750	Moran Brothers, for themselves and others.
27,500	E. J. Henry.
$4,000,000	

Afterwards new issues of shares were made to meet cost of constructions of the connection between Zanesville and Dresden, of which Moran Brothers and their friends took 2,188 shares of $50 each, for which they paid par in installments, say $109,400, which is now totally worthless, owing to the cruel and unjust policy pursued by the Pennsylvania R. R'd to throw their entire business on the Pittsburgh, Cincinnati & St. Louis R. R'd, and not using the Cinc'ti & M'gum Valley, even for local traffic which could be di-

verted to other lines owned by the Pennsylvania R. R. Co. Is this to be persevered with, notwithstanding the enormous development of the traffic of the country and the evident true interest of the Pennsylvania R. R'd, who could use with great advantage the Cinc'ti & M'gum road for a portion of the Cincinnati and Southwestern traffic, particularly in coal? The Cinc'ti & M'gum Valley earns less than it did when it had no other Eastern connections than the Ohio Central R. R'd and was a competitor of the old Steubenville & Ind'a R. R'd and connections. The $765,000 1st-mortgage bonds and the shares of the Cinc'ti & Mus'gum owned by the Penna. R. R. Co. are thus rendered comparatively worthless, whereas they could easily be made as valuable as the shares and bonds of any of the
247 great through lines if the traffic of the country was permitted to take its natural channels.

Very truly,

(Signed) CH'S MORAN.

(EXHIBIT A.)

PITTSBURGH, 25*th July*, 1885.

Messrs. Moran Bros., New York.

GENTLEMEN: As telegraphed you a few weeks ago in reply to your message of inquiry a suit has been instituted by Samuel Jeans *et al. vs.* Pittsburgh, Cincinnati & St. Louis Railway Company and Cincinnati & Muskingum Valley Railway Co., in which it is sought to annul the present lease of the Cincinnati & Muskingum Valley railway to the former company. Mr. Jeans was one of the dissenting stockholders of the Pittsburgh, Cincinnati & St. Louis Company at the stockholders' meeting called for the purpose of ratifying the lease, and filed his protest against the same. He has associated with him the trustees of Cadiz township, Harrison county, Ohio; the trustees of Rumley township, Harrison county, Ohio; the trustees of German township, Harrison county, Ohio; the trustees of Steubenville township, Jefferson county, Ohio, and the city of Steubenville, Jefferson county, Ohio, some of which also voted against the ratification of the lease, and the others were not represented at the meeting. It being my duty to defend this lease on the part of the Cincinnati & Muskingum Valley Company, I have retained Messrs. Trainer & Son, attorneys, Steubenville, O., for this purpose. You are aware, of course, that the company has no means with which to pay the expenses of this defense, and the Pittsburgh, Cincinnati & St. Louis Co. as lessee of the road refuses under the circumstances to advance the necessary money therefor. In view of the fact the bondholders of the Cincinnati and Muskingum Valley Railway Co. are the parties who have the most vital and direct interest in preserving the lease unimpaired, it seems to me a contribution should be made by them to this end. I have communicated with the
248 Penna. R. R. Co., which holds a little more than one-half in amount of the bonds, and they have intimated that they would contribute their proportion of the money necessary for such expenses. Will you, as representing the remaining bondholders, do the same?

I shall be obliged to you for an early reply, as Messrs. Trainer & Son have already made a demand upon me for a retaining fee in the case.

Yours truly,
(Signed) THOS. D. MESSLER, *President.*

(EXHIBIT 86.)

Cincinnati & Muskingum Valley Railway Co.

ZANESVILLE, OHIO, *December* 30, 1885.

Notice.

Notice is hereby given that on the first day of January, 1886, the Cincinnati & Muskingum Valley Railway Company will resume possession and control of its entire railway, and will operate the same in its own name and by its own employés from and after the date above named. All persons heretofore employed by the Pittsburgh, Cincinnati & St. Louis Railway Company directly in connection with the Cincinnati & Muskingum Valley railway will continue to discharge the duties assigned to them heretofore unless otherwise specially ordered.

By order of the board of directors.

THOS. D. MESSLER, *President.*

ZANESVILLE, O., *Jan. 25th*, 1886.

Mr. Chas. Moran, New York, N. Y.

DEAR SIR: In answer to your letter of January 19th, asking for a copy of the minutes of the meeting of directors, below please find an abstract:

249 "Special meeting of the board of directors of the C. & M. V Railway Company, held at the principal office of the company, Zanesville, Ohio, December 30th, 1885, at ten o'clock a. m.

Present: Messrs. Messler, Churchill, Graham, and Herdman.

Minutes of the last meeting read and approved.

The resignation of Mr. W. F. Black, as secretary and treasurer, was presented and accepted. F. G. Darlington nominated secretary in place of W. F. Black, resigned, and elected for the ensuing year. John E. Davidson elected treasurer in place of W. F. Black, resigned.

President presented a certified copy of the decree of the Jefferson county common pleas court in the suit of Samuel Jeans *et al. vs.* P., C. & St. L. and C. & M. V. Railway Companies.

The president also presented a notice served on him by the P., C. & St. L. Railway Company to the effect that the P., C. & St. L. Railway Company was prepared to and would turn over the C. & M. V. railway on January first.

After full discussion of the subject it was resolved, That in obedience to the decree of the court of common pleas of Jefferson county, Ohio, in the suit of Samuel Jeans *et al. vs.* The P., C. & St. L. Rail-

way Company and The C. & M. V. Railway Company, and in conformity with the notice dated December 28, 1885, served on the company by the P., C. & St. L. Railway Company to the effect that they will be prepared on and after January first, in accordance with the decree referred to, to surrender to the control of the C. & M. V. Railway Company its railroad and other property heretofore leased to them, the president be, and he is hereby, authorized and directed to have issued and published a notice in the form following."

(Herewith I enclose notice issued.)

"The next business being the election of officers for conducting the business of the C. & M. V. Railway Company, the following persons were nominated by the president and duly elected by the board: J. W. Renner, auditor; F. G. Darlington, secretary; G. W. Davis, general freight and ticket agent; Jno. S. Brasee, solicitor; F. G. Darlington, superintendent.

250 The salaries of these officers being fixed, on motion the board adjourned."

I trust this information will prove satisfactory.

Very truly yours, F. G. DARLINGTON,
Secretary.

(EXHIBIT 85.)

Telegram.

PHILADELPHIA, *June 7th.*

Chas. Moran, 23 Nassau street:

I will be in Pittsburgh Monday and Tuesday. If you can be there on either of those days I will be glad to see you.

THOS. A. SCOTT.

SIMON BORG, of lawful age, being first duly cautioned and sworn on the part of the plaintiffs, deposes and says as follows:

By Mr. HOADLY:

Question 1. Please state your name, age, residence, and occupation.

Answer. Name, Simon Borg; age, 46; occupation, banker and broker; residence, No. 4 East 68th St., New York city.

Q. 2. Have you, in your business as banker, made a specialty of sales of bonds?

A. I have.

Q. 3. Please state whether you have sold any first-mortgage bonds of the Cincinnati & Muskingum Valley railroad.

A. I have bought and sold them.

Q. 4. Look at the circulars now shown you, heretofore identified by the initials of the notary and the date, one signed E. W. Clark & Co. and Clark, Dodge & Co. and the other signed Hugh J. Jewett, president, the former beginning "We offer for sale, at ninety (90) and accrued interest, $800 of the first-mortgage seven per cent.

bonds" and the other beginning "$1,500,000, the first-mort-
251 gage seven per cent. bonds of the Cincinnati & Muskingum Valley Railway Co. of Ohio," and state whether you have ever seen these circulars or either of them.

A. I have not, to the best of my recollection.

Q. 5. Please state whether you are familiar with the clause in the lease of the Cincinnati & Muskingum Valley Railway Company which is contained in the second item of the first clause of the lease, in these words: "Provided, however, that in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest of the existing first-mortgage bonds of the party of the first part as it matures, the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance of net earnings in open account, to be returned out of the subsequent earnings, and not otherwise." If you answer that you are so familiar, please state when and from whom you first learned of the existence of that clause in the lease of the Cincinnati & Muskingum Valley railway to the Pittsburgh, Cincinnati & St. Louis R'y Company.

A. I am familiar with that clause. I think I learned of that clause by reading over the lease itself—that is, a copy of the lease.

Q. 6. When?

A. I should think about three years ago. I think I read it at Mr. Moran's office about three years ago, I should judge—perhaps four years.

Q. 7. Please state whether you have bought any bonds upon the faith of the guarantee contained in that clause or whether you have sold any bonds, representing the existence of this clause as a muniment of title adding to the value of the security to the purchaser.

(Objected to.)

A. I have done both.

Q. 8. To what extent have you dealt in bonds, either selling or purchasing, in transactions in which this clause in the lease thus referred to has been an inducement to purchase or used as an inducement to sell?

(Objected to.)

252 A. It would be mere guess-work on my part; I should say probably to the extent of $100,000.

Q. 9. When you say that you first heard of this three years ago, have you a definite recollection that it was so recently as three years ago, or may it have been longer?

A. Between three and four years when I first started to deal in the bonds.

Cross-examined by Mr. BROOKS:

Cr. Q. 1. Mr. Borg, you have stated that you dealt in these bonds on the faith of this lease being a muniment of title. What do you understand that to be?

A. I understand that to be that, in case that road should not earn

sufficient to pay the interest on the bonds, the Pittsburgh, Cincinnati & St. Louis, I think, as it is called, should advance the funds and pay the interest promptly.

Cr. Q. 2. That is what you understand to be a muniment of title, is it?

A. Yes, sir.

Cr. Q. 3. Did you look into the question of the earnings and expenses of this road before you bought or sold any of these bonds?

A. Yes, sir.

Cr. Q. 4. What did you ascertain the fact to be?

A. I ascertained from Poor's Manual, which we take as a criterion of railroad earnings, that they were insufficient to pay the interest on the bonds.

Cr. Q. 5. Can you state any more definitely the number of transactions you have had in these bonds?

A. I should like to, but it being a matter of so many years ago, and transactions which occurred off and on, it is very difficult to fix any accurate amount; it may have exceeded that amount and may probably not have been quite so much.

Cr. Q. 6. From your best recollection, Mr. Borg, of these transactions do you think it is nearer fifty or one hundred thousand dollars that you have bought?

253 A. I should think it would be nearer $100,000 than fifty.

Cr. Q. 7. Can you mention any particular transactions in them?

A. I remember having sold some to a Mr. F. C. Lawrence.

Cr. Q. 8. How many?

A. But I couldn't state now how many. I have also sold some to Mr. Henry Sanford?

Cr. Q. 9. That is two. How many did you sell to Mr. Sanford?

A. I think he purchased $10,000.

Cr. Q. 10. What is your best recollection of the amount purchased by Mr. Lawrence?

A. My recollection is about twenty-five or thirty thousand; but that is a matter of some years and it is very difficult to remember.

Cr. Q. 11. Do you think it was fifteen or twenty-five?

A. I wouldn't like to swear to either amount. I know that he bought the bonds from me, but I couldn't say the amount.

Cr. Q. 12. You can't tell whether it was fifteen or twenty-five?

A. I can't tell without referring to the books. I can tell from the books.

Cr. Q. 13. Can you mention the name of a third person who has bought these bonds of you?

A. I think I sold some of the bonds besides, but I can't recall the parties. I think I sold some to two different parties aside from them, but I can't remember.

Cr. Q. 16. Who were they?

A. That is what I am trying to think now. I couldn't refresh my memory on the subject now.

Cr. Q. 15. Then Mr. Lawrence and Mr. Sanford are the only two names you can recall at present?

A. Yes. I can recall from the fact that they are regular constituents of ours, and they frequently made inquiries regarding the payment of the coupons.

Cr. Q. 16. You sold to one 10,000—Mr. Sanford—and you
254 can't tell whether it was fifteen or twenty-five to Mr. Lawrence?

A. I can't tell the amount without referring to the books.

Cross Q. 17. And you can't remember the name of any other person now?

A. I can't at the time, but my impression is that I sold the other bonds in open market—what we call the regular market—without selling to any of my constituents, and therefore it left no impression on my mind.

Cr. Q. 18. Are you positive how many of those you did sell in the open market?

A. I wouldn't like to swear to the amount without referring to the books.

Cr. Q. 19. It was within three years, was it not?

A. Yes; I think it was about three years, I should judge.

Cr. Q. 20. Are you quite positive you did sell any on the open market?

A. I have a very strong impression that I did, and yet we have quite a number of transactions during the day, and it is very difficult to remember any individual transaction for so long a period.

Cr. Q. 21. So that you wouldn't feel justified in stating positively that you had sold any of these bonds on the open market?

A. No; I wouldn't like to state it positively.

By Mr. HOADLY:

Q. 22. Mr. Borg, what do you mean by selling in the open market?

A. Selling to bankers and brokers.

Q. 23. By selling in the open market you mean selling to bankers and brokers who are not your clients and constituents—is that what you mean?

A. Yes, sir.

(Signed) SIMON BORG.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

255 I, Thomas F. Keating, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Charles Moran and Simon Borg were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by S. C. Ormsly, a stenographer, and were subscribed by the said witnesses respectively in my presence, and were continued from day to day as above set forth; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this.

In testimony whereof I have have hereunto set my hand and official seal this eighth day of March, 1886.

THOMAS F. KEATING,
Notary Public, N. Y. Co.

[SEAL.]

Notice.

Circuit Court U. S., Southern District of Ohio, Eastern Division.

CHARLES MORAN, Plaintiff,
v.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY *et al.*, Defendants.
} Case No. —. Pending in Chancery.

The above-named defendants will take notice that on Friday, the 5th day of March, A. D. 1886, the plaintiff above named will take the depositions — Charles Moran and Evan J. Henry, sundry witnesses, to be used as evidence in the trial of the above cause, at the office of Platt & Bowers, No. 52 William St., New York city, in the county of New York, in the State of New York, between the hours of ten o'clock a. m. and 6 o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

HOADLY, JOHNSON & COLSTON,
Solicitors for Moran and Henry.

256 UNITED STATES OF AMERICA,
Southern District of Ohio, Hamilton County, } *ss:*

Thomas Jones, being duly sworn, says that he is in the employ of Hoadly, Johnson & Colston, attorneys, Cincinnati, Ohio, and that on Wednesday, the 24th day of February, 1886, he deposited in the post office at Cincinnati, in season for transmission by the evening mail of that day, in envelopes, with postage fully prepaid by stamps, and duly registered, copies of the notice to take depositions contained on the first page of this sheet, signed Hoadly, Johnson & Colston, solicitors for Moran and Henry, as follows: One addressed to Hon. J. T. Brooks, care of P., C. & St. L. R'y Co., Pittsburgh, Penn.; one addressed to Thomas D. Messler, Esq., president Cincinnati and Muskingum Valley R'w'y Co., Pittsburgh, Penn., and the third addressed to J. M. Estep, Esq., Cadiz, Harrison county, Ohio; and that said envelopes containing said notice each contained a letter to the party so addressed from George Hoadly, of which letter affiant took a press copy in the office letter book of Hoadly, Johnson & Colston before mailing.

THOMAS JONES.

Sworn to before me and subscribed in my presence this 24th day of February, A. D. 1886.

JNO. F. JOCKEL,
Notary Public, Hamilton County, Ohio.

[SEAL.]

257 And afterwards, to wit, on the 3rd day of April, A. D. 1886, the following depositions were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of Josiah M. Estep.

UNITED STATES OF AMERICA,
Southern District of Ohio.

CHARLES MORAN, Plaintiff,
vs.
THE P., C. & ST. L. RAILWAY CO., THE C. & M. VA. RAILWAY CO., SAMUEL JEANS, *et al.*, Defendants.

The above-named defendants will take notice that on Friday, the 26th day of March, A. D. 1886, the complainant above named will take the depositions of J. M. Estep, David L. Hughes, Patrick Lynch, James N. Haverfield, J. Howard Moore, S. J. Mack, George Becklay, J. M. Slates, D. D. Kail, Isaac Stewart, C. N. Birney, William E. Samuel, and J. R. Roberts, sundry witnesses, to be used as evidence in the trial of the above cause, at the office of D. A. Hollingsworth, at Cadiz, in the county of Harrison, in the State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

HOADLY, JOHNSON & COLSTON,
Solicitors for Complainant.

Depositions of sundry witnesses taken before me, John M. Garven, a notary public within and for the county of Harrison, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the plaintiff (or complainant) in an action pending in the circuit court of the United States for the southern district of Ohio, eastern division, in which Charles Moran is complainant or plaintiff and The
258 P., C. & St. L. Railway Co., The C. & M. V. Railway Co., Samuel Jeans, and others are defendants, Hon. D. A. Hollingsworth being present on behalf of plaintiff and J. M. Estep on behalf of defendants.

JOSIAH M. ESTEP, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is Josiah M. Estep; age, 57 years; residence, Cadiz, Harrison county, Ohio; occupation, attorney-at-law.

Q. 2. Are you an attorney in the case of Samuel Jeans *et al. v.* The P., C. & St. L. Railway Co. *et al.*, now pending in the circuit court of Jefferson county, Ohio? If so, please state for whom and by whom you are employed.

(Objected to by defendants' attorney.)

A. Yes; am employed by Samuel Jeans, Philadelphia, Pennsyl-

vania; Cadiz township trustees, Rumley township trustees, German township trustees, Robert Sherrard, Steubenville, Ohio; J. T. Brooks, Pittsburgh, Pennsylvania, and a number of others stockholders of the P., C. and St. L. Railway Co. I can't give names of all of them. I have no direct or completed agreement with the trustees of Steubenville township and the city of Steubenville, as at the time the suit was filed they had taken no official action, but I was informed that I might use their names and that the matter would be arranged thereafter.

Q. 3. From whom did you receive your information in regard to the action of Steubenville and Steubenville township before bringing the suit?

A. I had corresponded or rather had written to some of the trustees, but I believe I had no direct communication from either of them, and the information as to using their names, I believe, came from Mr. Sherrard.

Q. 4. Had you any conference with Hon. J. Dunbar, attorney of Pittsburgh, Cincinnati and St. Louis Railway Company, prior to bringing the suit in reference to the action to be taken by
259 Steubenville city and township? And, if so, state what information you received from him.

(J. M. Estep objects to the question because it calls for private considerations and correspondence of the attorney with his client, and is irrelevant.)

A. Some time—I think a very short time—before the suit was brought he told me that one or more of the trustees had spoken to him and made inquiry as to the nature of the suit I proposed to bring, and expressed a desire to have the lease in controversy set aside, and, as I now recollect it, a willingness to take part in the matter.

Q. 5. Did you have any personal conference prior to bringing the suit with Robert Sherrard or J. T. Brooks in reference to the action you were to take in their behalf?

A. I had. I believe it was in Steubenville. They both expressed a desire to have this lease set aside, and believed it could and ought to be set aside. Both stated they were large stockholders in the road, and desired to employ me as one of their counsel in the matter, and desired that I should get as many other stockholders as I could to take part in the matter. They gave me some facts in regard to the transaction and as to how the lease was gotten up, which were new to me, for they stated that if the lease could be set aside and another lease and the earnings of the Pan Handle road be applied to the payment of its own debts they believed the stock would in time be valuable.

Q. 6. Who were present at that conference except Sherrard and Brooks and yourself, and where did it take place?

A. That was in Mr. Dunbar's office, in Steubenville. Dunbar was present part of the time; no other that I remember.

Q. 7. Prior to that conference had not your preliminary negoti-

ations in reference to bringing the suit been mainly with Mr. Dunbar?

A. No; prior to that conference I knew nothing about the nature of the suit, and had no negotiation with Mr. Dunbar and no communication unless it was a notice or request to meet Mr. Brooks in Steubenville.

Q. 8. Please state the nature and extent of your contract
260 of employment with the trustees of Cadiz, Rumley, and German townships, in Harrison county, Ohio, and with the city of Steubenville and Steubenville township, in Jefferson county, Ohio, and also with Robert Sherrard and J. T. Brooks. State in detail.

A. My contract with the townships you mention is in writing (I mean the townships in Harrison county). I have here the original contract with the Cadiz township trustees, which I am ready to exhibit. I have here a correct copy of that contract, which may be attached to this deposition and made part of my answer, and the contracts with Rumley and German townships are precisely the same, each of them referring to the agreement and resolution of the Cadiz township trustees and agreeing to employ me on the same terms.

(Copy of contract attached and marked Exhibit "A.")

As to the city of Steubenville and Steubenville township, as I stated before, I have no definite arrangement as to fees. Mr. J. T. Brooks and Robert Sherrard agreed to pay me reasonable fees for whatever services I should perform in the mattter, no rate being fixed.

Q. 9. Do you know of any connection between Samuel Jeans and the Pittsburgh, Cincinnati and St. Louis Railway Company or the Pennsylvania Railway Company?

A. I don't know of any connection he has except as a large stockholder in the Pittsburgh, Cincinnati and St. Louis Railway Company.

Q. 10. What arrangement have you with him in reference to the prosecution of the case?

A. The arrangement with him, as I understand it, is about the same as with the Cadiz township trustees.

Q. 11. Had you made any arrangement with any of your other clients with reference to commencing the action prior to your conference with Messrs. Sherrard and Brooks in Mr. Dunbar's office? If so, state what it was.

A. No; I had not made any arrangement before that with anybody.

Q. 12. Please state if you know of any contract, understand-
261 ing, or agreement by which the trustees of either of the townships mentioned or any of the other plaintiffs in the case are or are to be indemnified against the payment of attorney fees or, in the event of losing the case, against the payment of costs. If yea, state fully the terms of such contract, understanding, or agreement.

(Objected to by defendants' attorney.)

A. I know of no such agreement. I have made no such agreement and no agreement with my clients other than I before stated. I made no agreement to indemnify any of them as to costs, and I have no knowledge or information that anybody else has.

Q. 13. Do you know of any understanding or agreement between the defendant The Pittsburgh, Cincinnati and St. Louis Railway Company or any of its agents with the plaintiffs or either of them or their agents or attorneys to secure concert of action in the prosecution of the case? If yea, state fully all you may know on that subject.

A. I know of no such agreement or of any agreement between the Pittsburgh, Cincinnati and St. Louis Railway Company and any of the plaintiffs, and there is no such understanding that I know of. The only concert of action that I know of is between the plaintiffs and other minority stockholders.

Q. 14. State if the Pittsburgh, Cincinnati and St. Louis Railway Company or either of its officers has, so far as you know, assumed, directly or indirectly, any responsibility for the employment of counsel in the prosecution of the action or in the payment of other costs of the plaintiffs.

A. Don't know of their having done anything of the kind. J. T. Brooks and Robert Sherrard are officers and stockholders, as I understand it, in said company, and I am employed, as I have stated, by Brooks and Sherrard as stockholders in said road.

Q. 15. State, if you know, who furnished the officers of the various townships in Harrison and Jefferson counties the information on which the petition is based. State fully all you may know on the subject.

A. I don't know of any information being furnished to the
262 trustees I represent in this county by anybody but myself. I showed them the lease. I exhibited to them the reports (or some of them) showing the amount of the funds of the Pan Handle road taken each year to pay the interest on the Muskingum Valley bonds, and I believe I explained to them the fact that some of the directors and officers of the lessor road were also directors in the lessee company, and that the Pennsylvania Company held a controlling interest in both roads and could and did control both; and probably some other information I had at the time. I believe I stated to them generally that I believed the lease ought to be and could be set aside, and if it were not set aside their stock would never be worth anything. I also stated to them that the lease contemplated repayment by the lessor company to the lessee company of the money advanced by the lessee company to the lessor company to pay interest on said bonds, and that none of it ever had been repaid or refunded, or ever could be.

Q. 16. Had they (the trustees) any knowledge touching the making of the lease sought to be canceled or its practical workings before the commencement of the action, except such as was furnished by yourself?

A. Not that I know of.

J. M. ESTEP.

(J. M. Estep, as attorney for Samuel Jeans and others, objects to all the foregoing questions and answers because they are incompetent and irrelevant.)

Also DAVID L. HUGHES, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation, and what relation do you sustain to the township of Cadiz, county of Harrison, Ohio?

A. My name is David L. Hughes; age, 57 years; residence, Cadiz, Ohio; occupation, plasterer. I am one of the trustees, and have been since the spring of 1876.

Q. 2. Are you, as such trustee, one of the plaintiffs in the case of Samuel Jeans and others against the Pittsburgh, Cincinnati and St. Louis Railway Company and others, now pending in the circuit court of Jefferson county, Ohio?

A. I am.

263 Q. 3. What, if any, contract have the trustees of said Cadiz township with the attorney or attorneys for the plaintiffs in that case in reference to the payment of fees or, in the event of losing the case, the payment of costs?

A. On the 16th of May last we entered into a contract with Mr. Estep, which is in writing, which I hereby refer to and make it a part of my answer. (The copy thereof is attached to Mr. Estep's deposition.) We have no other contract as to costs or fees.

Q. 4. Is that contract a matter of official record by the board of trustees? If yea, when was the resolution adopted?

A. It is. It was adopted May 16, 1885, and was afterward put on record.

Q. 5. Who is to pay the costs of that case, as you understand it, in the event of the plaintiffs losing it?

(Objected to by defendants' attorney.)

A. There was nothing said as to that, but I suppose Cadiz township would be responsible for her share.

Q. 6. What information had you on the subject-matter of the action before filing the petition, and from whom did you obtain such information?

A. I had no information in regard to the lease except what we got from the attorney who showed us the lease and explained to us the workings of the road.

Q. 7. Had you any information at all in reference to the lease sought to be canceled or its practical effects before filing the petition except such as was voluntarily furnished you by J. M. Estep?

A. I had not.

Q. 8. What do you know about the stock of Cadiz township, and have you ever seen the certificates therefor since you were trustee?

A. I have never seen the certificates of my own knowledge. I might say I know nothing, only as represented to me by others. About three years ago Mr. J. Dunbar, of Steubenville, told me that

our certificates were in the railroad office or in his own office, in Steubenville.

D. L. HUGHES.

264 Also JAMES N. HAVERFIELD, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is James M. Haverfield; age, 65 years; residence, Cadiz township, Harrison county, Ohio; occupation, farmer.

Q. 2. What relation do you sustain to Cadiz township, Harrison county, Ohio, and how long have you sustained such relation?

A. I have been trustee of Cadiz township about fifteen years.

Q. 3. Are you, as such trustee, one of the plaintiffs in the case of Samuel Jeans and others *vs.* The Pittsburgh, Cincinnati & St. Louis Railway Co. and others, now pending in the circuit court of Jefferson county, Ohio?

A. Yes.

Q. 4. What contract, if any, have the trustees of said Cadiz township with the attorney or attorneys for the plaintiffs in that case in reference to the payment of fees, or, in the event of losing the case, the payment of costs?

A. Well, there was no permanent contract, to my knowledge. We were to pay a reasonable fee if the case was gained. The contract itself is in writing. We had no other contract with any one in regard to the matter. A copy of the contract is attached to this deposition.

Q. 5. Is that contract a matter of official record by the board of trustees; if so, when was the resolution adopted?

A. Yes. It was adopted, I think, May 16, 1885.

Q. 6. Who is to pay the costs of that case, as you understand it, in the event of losing it?

A. Well, I don't know.

Q. 7. What information had you on the subject-matter of the action before filing the petition, and from whom did you obtain the information?

A. Well, I got the information from our attorney. He showed us the contract of lease and explained it satisfactorily
265 that the stock would never be worth anything unless the lease was canceled and set aside.

Q. 8. Had you any information at all in reference to the lease sought to be cancelled, or its practical effects, before filing the petition, except such as was voluntarily furnished to you by J. M. Estep?

A. No; I had not.

Q. 9. What, if anything, do you know about the stock of Cadiz township in the Pittsburgh, Cincinnati and St. Louis Railway Company, and have you ever seen the certificate therefor?

A. I have never seen the certificates, but I understand they are in Mr. Dunbar's office, at Steubenville.

JAS. N. HAVERFIELD.

Also PATRICK LYNCH, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Patrick Lynch; residence, Cadiz, Ohio; age, 51 years; occupation, liveryman.

Q. 2. What relation do you sustain to Cadiz township, Harrison county, Ohio, and how long have you sustained such relation?

A. I am trustee, and have been for three years.

Q. 3. Are you as such trustee one of the plaintiffs in the case of Samuel Jeans and others *vs.* The Pittsburgh, Cincinnati and St. Louis Railway Company and others, now pending in the circuit court of Jefferson county, Ohio?

A. Yes, sir.

Q. 4. What contract, if any, have the trustees of said township with the attorney or attorneys for the plaintiffs in that case in reference to the payment of fees or, in the event of losing the case, the payment of costs?

A. I suppose we have a contract in writing with Mr. Estep in regard to his fees, and I don't know of any arrangement about the costs. We have not had any conversation or talk or contract with anybody about the matter outside of Mr. Estep.

266 Q. 5. Is that contract a matter of record by the board of trustees; if, so, when was the resolution adopted?

A. Yes; it was adopted in May, 1885; the same day we made the contract; the 16th, I believe.

Q. 6. Who is to pay the costs of that case, as you understand it, in the event of the plaintiffs losing it?

A. There was nothing said about that.

Q. 7. What information have you as to the subject-matter of the action before filing the petition, and from whom did you get the information?

A. I have never had any until we got it from our attorney in his office. He gave us a history of the railroad, the way it was run, and how it was leased, and also as to the earnings of the road, and where they had to fall back to get the money to pay the expenses of running it—I mean the expenses of running the Muskingum Valley road.

Q. 8. Had you any information at all in regard to the lease sought to be canceled or its practical effects, except such as was voluntarily given to you by the attorney, Mr. Estep, as you have stated?

A. No, sir; none whatever.

Q. 9. What, if anything, do you know about the stock owned by Cadiz township in the Pittsburgh, Cincinnati and St. Louis Railway Company? Did you ever see the certificate or certificates of stock?

A. Nothing; I never saw the certificates.

P. LYNCH.

Also J. HOWARD MOORE, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is J. Howard Moore; age, thirty-four years; residence, Cadiz, Ohio; occupation, grocer.

Q. 2. What office, if any, do you hold in Cadiz township, Harrison county, Ohio?

A. Township clerk, since April, 1885.

Q. 3. Do you know of a contract existing between the trus-
267 tees of the said Cadiz township and J. M. Estep, attorney, in regard to the prosecution of a case against the Pittsburgh, Cincinnati and St. Louis Railway Company and the Cincinnati and Muskingum Valley Railway Company to cancel a lease of the latter road to the former? And, if so, state fully what you may know in reference to the making thereof.

A. Yes. I know they made a contract. All the information I have is from the record. I will furnish a certified copy of the record, and you can attach it as a part of my answer and mark it Exhibit B.

Q. 4. Were you present or notified of the meeting of the board of trustees at which the contract was made?

A. No.

Q. 5. Who made the record, a certified copy of which you produce?

A. I did.

Q. 6. How long after the meeting was it before you made the record, and who notified you to make it?

A. I do not know the date. D. L. Hughes notified me to make it. Mr. Jas. N. Haverfield asked me some time afterward if I had made the record.

Q. 7. Was the record made before or after you heard of the commencement of the suit?

A. It was made before I heard of the commencement of the suit.

Q. 9. About how long ago did you make the record?

A. To the best of my recollection, it was in the neighborhood of five months ago.

Q. 9. Do you know of any contract or understanding, verbal or otherwise, by which the township is indemnified against the payment of attorney fees or costs in the event of losing the case?

A. I only know of the one contract, the one I speak of, which is the written contract. I know of nothing outside of that.

J. HOWARD MOORE.

Thereupon the taking of these depositions is adjourned till 9 a. m. to-morrow, March 27, 1885.

J. M. GARVEN,
Notary Public.

268 Thereupon, on Friday, March 27, 1886, at 8 o'clock a. m., the taking of these depositions is resumed, pursuant to adjournment.

ISAAC STEWART, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is Isaac Stewart; age, 43 years; residence, Rumley township, Harrison county, Ohio; occupation, farmer.

Q. 2. What official relation do you sustain to said Rumley township, and how long have you sustained such relation?

A. Am trustee, and have been since April, 1885.

Q. 3. Are you as such trustee one of the plaintiffs in the case of Samuel Jeans and others *v.* The Pittsburgh, Cincinnati and St. Louis Railway Company and others, now pending in the circuit court of Jefferson county, Ohio?

A. Yes.

Q. 4. What contract, if any, have the trustees of said Rumley township with the attorney or attorneys for the plaintiffs in that case in regard to the payment of fees or, in the event of losing the case, the payment of costs?

A. We have a contract and have it on record. I shall not attempt to state what is in it; it is here and will speak for itself. We have a written contract. I hereby produce a copy of said written contract and ask that it be hereto attached and marked "Exhibit C" and made a part of my answer.

Q. 5. Who was present at the meeting of the board when that contract was made?

A. There was no one present but Mr. Samuel, Mr. Birney, myself, and Mr. Estep.

Q. 6. Where was that meeting of the board held?

A. At the Widow Ramsour's house, in Jewett.

Q. 7. Why was the clerk of the township not present?

A. I don't know that he had any notice to be present, and
269 the trustees of Rumley township, when they have any business to be put on record, they give it to him and have him record it.

Q. 8. When was that meeting held, and, if a special meeting, how was it called?

A. I think it was from the 20th of June to the last of June. I can't say now. It was called by Mr. Estep.

Q. 9. Who prepared the resolution adopted on that day?

A. Mr. Estep. He made the resolution, and we consulted on it and adopted the resolution.

Q. 10. What other business was transacted at that meeting?

A. None that I recollect of at present.

Q. 11. When did you have that resolution recorded or entered on your minutes?

A. I can't tell you. I gave it to the township clerk, and he recorded it.

Q. 12. How long was this after the meeting?

A. Can't answer that to any definite time.

Q. 13. Was it six, eight, or twelve months?

A. It was inside of twelve months, because I have not been trustee twelve months yet.

Q. 14. Is that as near as you can come to the time?

A. No; the time, as I tell you, was from the 20th to the last of

June that we had the meeting, and it was some time after that I handed it to him, and I did not take any minute of it.

Q. 15. State, as nearly as you can, when you handed that resolution to the clerk.

A. I reckon it was on the settlement day I gave that resolution to the clerk. I think it was. He was away from home for two or three months.

Q. 16. What settlement day do you mean, and when was it?

A. I mean the township settlement, when we pay off supervisors, and such business. I think it was on the first Monday in March.

Q. 17. Then you retained that resolution until about March 1, 1886?

A. Yes.

270 Q. 18. I ask you now if Mr. Estep did not himself take away the original resolution that was adopted that day and leave with you a copy only.

A. Yes.

Q. 19. Who is to pay the costs of that suit in the event that you lose it?

A. We did not make any arrangement about the costs in the event we would lose it.

Q. 20. Did you have any talk with Mr. Estep on that subject; and, if so, what assurances did he give you—verbal or otherwise?

(Objected to by defendants' attorney.)

A. We had talk with him only as he is individually concerned. We have the contract in writing.

Q. 21. What did he say to you in the conversation in regard to the payment of costs in the event you would lose the suit? State fully.

A. If there was anything said about the payment of the costs I have no recollection what it was.

Q. 22. What was said about the payment of attorney's fees in the event you should lose the case?

(Objected to by defendants' attorney.)

A. That was left to our option.

Q. 23. What information had you on the subject-matter of the action before filing the petition, and from whom did you obtain such information?

A. Well, the body of the information we received was from Estep. Well, the information was on the drain of this road that the other was consuming. Well, the information was that our stock was being drained by this branch consuming our funds.

Q. 24. Had you any information at all in regard to the lease sought to be canceled or its practical effects except such as was voluntarily furnished you by Mr. Estep?

A. Not directly; but still I had information from the road, as I do from almost all the roads we have.

Q. 25. State fully and in detail what information you had in re-

gard to this lease or the subject-matter of the suit except such as you had from Mr. Estep.

271 A. Well, there's an idea all the time that this Pan Handle road ought to pay a certain per cent.; but we as individuals talk in this way: that if it was not for these branches, such as Cadiz and some more of them, that we would have a dividend.

Q. 26. State what this suit that you have brought is about.

A. Well, it is in regard to a branch of this road that has been leased, and we want that lease set aside.

Q. 27. Now, tell me what you know about that lease except what you got from Mr. Estep before you brought the suit.

A. I did not know anything in particular in regard to the lease.

ISAAC STEWART.

WM. E. SAWVIL, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. E. Sawvil; age, thirty-eight years; residence, Rumley township, Harrison county, Ohio; occupation, farmer.

Q. 2. What official relation, if any, do you sustain to Rumley township, Harrison county, Ohio, and for how long?

A. Have been one of the trustees about three years.

Q. 3. Are you, as such trustee, one of the plaintiffs in the case of Samuel Jeans and others *vs.* The Pittsburgh, Cincinnati and St. Louis Railway Company and others, pending in the circuit court of Jefferson county, Ohio?

A. Yes.

Q. 4. What contract, if any, have the trustees of said Rumley township with the attorney or attorneys for the plaintiffs in that action in regard to the payment of fees or, in the event of losing the case, the payment of costs?

A. The contract in regard to fees is in writing, and a copy of it is attached to Mr. Stewart's answers. That is the only contract we have on the subject.

Q. 5. What assurances, verbal or otherwise, were made to
272 you by Mr. Estep at the time of making that contract in regard to the payment of costs in the event you would lose the suit?

(Objected to by defendants' attorney.)

A. I don't know that there was much assurance given us. If I recollect right he said the costs would be very heavy on us, he thought.

Q. 6. Who are to pay the costs in the event of losing the case, as you understand it?

(Objected to by defendants' attorney.)

A. Well, I don't know. I suppose likely we would have to pay some of it.

Q. 7. How is it in regard to the payment of attorney's fees in the event of losing the case?

A. Our contract specifies what we are to pay—five cents per share.

Q. 8. Have you no other assurance from Mr. Estep in regard to attorney fees in case you lose the suit?

A. No; as I understand it we are obligated to pay his fee, win or lose.

Q. 9. What information had you in regard to the subject-matter of the action before bringing the suit, and from whom did you obtain such information?

A. I had no information until we met Mr. Estep.

Q. 10. Had you any information at all in regard to the lease sought to be canceled, or its practical effects, before bringing the suit, except what was voluntarily furnished you by Mr. Estep?

A. No.

WM. E. SAWVIL.

Also CHARLES W. BIRNEY, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

A. Chas. W. Birney; age, 27 years; residence, Rumley township, Harrison county, Ohio; occupation, farmer.

Q. 2. What office, if any, do you hold in said township, and how long have you held the same?

A. Am trustee, and have been since April, 1885.

273 Q. 3. Are you as such officer one of the plaintiffs in the suit of Samuel Jeans and others against The Pittsburgh, Cincinnati and St. Louis Railway Company and others, now pending in the circuit court of Jefferson county, Ohio?

A. Yes.

Q. 4. What contract, if any, have the trustees of said township with the attorney or attorneys for the plaintiffs in that action in regard to the payment of fees or, in the event of losing the suit, the payment of costs?

A. I believe they are to bear the costs. The contract is in writing and a copy is attached to Mr. Stewart's deposition, and I know of no other contract or arrangement in regard to fees or costs.

Q. 5. What information had you in regard to the subject-matter of the action before its commencement and from whom did you obtain it?

A. I had not any besides what I got from Mr. Estep.

CHARLES W. BIRNEY.

Also J. ROSS ROBERTS, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

A. J. Ross Roberts; age, 60 years; residence, Jewett, Harrison county, Ohio; occupation, saddler.

Q. 2. What official relation, if any, do you sustain to Rumley township, Harrison county, Ohio, and how long have you sustained such relation?

A. I am township clerk and have been continuously about five years.

Q. 2. Were you present or had you notice of a special meeting of the board of trustees of said township said to have been held at Mrs. Ramsour's house, in Jewett, some time in June, 1885?

A. I was not present and had no notice of it.

Q. 4. How long afterward was it that you heard of such special meeting having been held?

A. Well, I believe I heard Mr. Stewart say something about it probably two or three weeks afterward.

274 Q. 5. Were you afterwards furnished with what purported to be a copy of a resolution adopted by the board at that meeting and requested to place the same on record?

A. Yes.

Q. 6. When?

A. March 1, 1886.

Q. 7. Did you enter it on your record? If so, please produce a copy and have it attached to this deposition.

A. I did; and herewith produce it and make it a part of my answer, marked Exhibit "C."

Q. 8. Had you any information in regard to the commencement of a certain action brought by said trustees and others against the Pittsburgh, Cincinnati and St. Louis Railway Company and others in Jefferson county, Ohio, or the subject-matter thereof, before the filing of the petition?

A. No.

J. ROSS ROBERTS.

Also SAMUEL I. MACK, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

A. Samuel I. Mack; age, 49 years; residence, German township, Harrison county, Ohio; occupation, farmer.

Q. 2. What office, if any, do you hold in said township and how long have you held the same?

A. I am trustee, and have been since April, 1885.

Q. Are you, as such trustee, one of the plaintiffs in the case of Samuel Jeans and others against The Pittsburgh, Cincinnati and St. Louis Railway Company, pending in the circuit court of Jefferson county, Ohio?

A. Yes.

Q. 4. What contract, if any, have the trustees of said township with the attorney or attorneys for the plaintiffs in that action in regard to the payment of fees, or, in the event of losing the case, the payment of costs?

A. We contracted with Mr. Estep to represent our stock. We contracted just the same as Cadiz. We had a copy of that, and we contracted just the same. It is in writing.

275 Q. 5. Had you a special meeting of the board of trustees to make that contract? If so, where was it held and who were present?

A. Yes; it was held at Cadiz junction, in the clerk's office. The three trustees, the clerk, and Mr. Estep were present.

Q. 6. How and by whom was the meeting called?

A. It was called by myself through the clerk. I notified him.

Q. 7. Were the proceedings of that meeting entered on your journal and made a matter of official record? If so, when?

A. Yes; I suppose it was the same day. The clerk was present and had his book. It was June 5.

Q. 8. What assurances had you, if any, from Mr. Estep at the time of making the contract in reference to the payment of attorney fees and costs in the event that the plaintiffs should lose the case?

A. That we should pay him whatever we thought was right, in our judgment. I do not remember anything being said about the payment of costs.

Q. 9. What information had you on the subject-matter of the action before its commencement, and from whom did you obtain such information?

A. I had none, only Mr. Estep's, and obtained it from him. He informed us that there was a branch road leased and that it did not pay itself, and the consequence was it required the proceeds (some, at least) of the Pan Handle to pay them.

Q. 10. At whose request did you call the special meeting of the board referred to?

A. Mr. Estep's. He wrote us to that effect.

S. I. MACK.

Also GEORGE BECKLEY, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

276 Answer. George Beckley; age, sixty-one years; residence, German township, Harrison county, Ohio; occupation, farmer.

Q. 2. What office do you hold in said township and how long have you held it?

A. Am trustee and have been since April, 1885.

Q. 3. Were you present at a special meeting of the board of trustees June 5, 1885, when it is said a contract was entered into with Mr. Estep to represent the trustees of German township in an action to be brought by them and others in Jefferson county, Ohio, against the Pittsburgh, Cincinnati & St. Louis Railway Company and others.

A. Yes.

Q. 4. If you entered into a contract with him at that time, you may state what were its terms with reference to the payment of attorney fees or costs in the event the plaintiffs should lose the case.

A. There was not much said; we were to pay a small fee if he gained it, and if not he was not very particular; that was left to us; if we saw fit to pay him anything all right, and if not all right; he would not be hard on us; I don't know that there was anything said about costs; the contract was reduced to writing.

Q. 5. What information had you on the subject-matter of the action before making that contract, and from whom did you receive such information?

A. Had not anything till we met him at Cadiz junction June 5;

that was the first I knew of it; he wanted our stock from German township to have the lease of the Muskingum Valley road set aside; the only information we had we got from him.

GEORGE BECKLEY.

Also JOHN W. SLATES, of lawful age, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

Answer. John W. Slates; age, sixty-six years; residence, German township, Harrison county, Ohio; occupation, farmer.

277 Q. 2. What office, if any, do you hold in said township and how long have you held the same?

A. Am trustee and have been since April, 1885.

Q. 3. Were you present at a special meeting of the board of trustees of said township, said to have been held June 5, 1885, at which meeting a contract was made or said to have been made with Mr. Estep to represent said trustees in an action to be brought by them and others against the Pittsburgh, Cincinnati and St. Louis Railway Company and others in Jefferson county, Ohio?

A. Yes.

Q. 4. If you entered into a contract with him at that time you may state what were its terms as to payment of attorney fees, or, in the event of losing the suit, the payment of costs.

A. We entered into a contract about attorney fees, but there was nothing about costs that I remember. The contract is in writing.

Q. 5. What information, if any, had you in regard to the subject-matter of the suit before you entered into that contract, and from whom did you get the information?

A. I had not any until that day of our meeting; that I received from Mr. Estep.

Q. 6. Had you any information at all in regard to the lease sought to be canceled or its practical effects except what was furnished you by Mr. Estep voluntarily on that day?

A. Not any.

G. W. SLATES.

Also DELANCON D. KAIL, being by me first duly cautioned and sworn, deposes and says:

Question 1. What is your name, age, residence, and occupation?

Answer. Delancon D. Kail; age, thirty-one years; residence, Cadiz junction, German township, Harrison county, Ohio; occupation, grocer.

Q. 2. What office, if any, do you hold in said township and how long have you held said office?

278 A. Am township clerk and have been since April, 1885.

Q. 3. Were you present at a meeting of the board of trustees, June 5, 1885, when, it is said, a contract was entered into with J. M. Estep, attorney, in reference to the prosecution of an action to be brought in Jefferson county, Ohio, against the Pittsburgh, Cincinnati and St. Louis Railway Company and others?

A. Yes.

Q. 4. Were the proceedings of that meeting reduced to writing and entered officially on your journal?

A. Yes.

Q. 5. When was the contract entered on your journal?

A. Along in the fore part of February, 1886.

Q. 6. At whose request was this done?

A. Well, it was by order of the trustees.

Q. 7. When did they give you such orders?

A. Along in the fore part of February, about time it was entered.

Q. 8. Did you not about that time receive a letter from Mr. Estep asking you to put it on record?

A. No.

Q. 9. Which one of the trustees spoke to you about it?

A. Mr. Mack, I think.

Q. 10. Please produce a certified copy of that record and attach it to your deposition and mark it "Exhibit D."

A. I herewith produce a copy and ask the notary to attach it and mark it "Exhibit D."

Q. 11. Do you know of any contract or understanding, other than what is contained in that agreement, in regard to the payment of attorney fees or costs in the event of the plaintiffs' losing the action?

A. No.

Q. 12. Had you any information at all in reference to the lease sought to be canceled or the subject-matter of the proposed
279 action before the making of such supposed contract, except such as was voluntarily furnished you and the trustees on that day by Mr. Estep?

A. No.

D. D. KAIL.

(J. M. Estep, as attorney for Samuel Jeans and others, objects to all the foregoing testimony as incompetent and irrelevant.)

EXHIBIT "A."

MAY 16, 1885.

Special meeting of Cadiz township trustees, all being present.

On motion, and after due consideration, it was unanimously resolved by said trustees that measures should be taken to have the lease of the Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company, which took effect May 1, 1873, rescinded, so that the stock held by said township in said railway company may be made of some value if possible, and that J. M. Estep be employed as our attorney for that purpose, his charges not to be more than $5 per hundred shares of stock held by said township, unless the lease is set aside, in which event he is to accept such compensation for his services as said trustees may deem reasonable; this resolution and agreement to take effect upon the signing thereof by said trustees and said J. M. Estep.

Trustees { JAMES N. HAVERFIELD.
D. L. HUGHES.
P. LYNCH.
J. M. ESTEP.

EXHIBIT "B."

MAY 16, 1885.

Special meeting of Cadiz township trustees, all being present.

On motion, and after due consideration, it was unanimously resolved by said trustees that measures should be taken to have
280 the lease of the Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company, which took effect May 1, 1873, rescinded, so that the stock held by said last-named railway company may be made of some value if possible, and that J. M. Estep be employed as our attorney for that purpose, his charges not to be more than five dollars per hundred shares of stock held by said township, unless the lease is set aside, in which event he is to accept such compensation for his services as said trustees may deem reasonable.

This resolution and agreement to take effect upon the signing thereof by said trustees and said J. M. Estep.

JAS. N. HAVERFIELD,
D. L. HUGHES,
P. LYNCH, *Trustees.*
J. M. ESTEP, *Attorney.*

JAS. H. MOORE,
Township Clerk.

I hereby certify that the foregoing is a correct copy taken from the records of Cadiz township, Harrison county, Ohio, March 26, 1886.

J. H. MOORE,
Township Clerk.

EXHIBIT "C."

JEWETT, O., *June* 9, 1885.

At a special meeting of the trustees of Rumley township, all being present, on consideration said trustees employ J. M. Estep as their attorney to represent their stock and their interests in endeavoring to set aside said loan, on the same terms as agreed on by the Cadiz township trustees, as stated in the agreement hereto attached as below.

WM. E. SAWVIL,
ISAAC STEWART,
C. W. BIRNEY, *Trustees.*

281 *Agreement of Cadiz Township Trustees.*

MAY 16, 1885.

"Special meeting of Cadiz township trustees, all being present:

On motion and after due consideration, it was unanimously resolved by said trustees that measures should be taken to have the lease of the Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company, which

took effect May 1, 1873, rescinded, so that the stock held by said township in said last-named railway company may be made of some value, if possible, and that J. M. Estep be employed as our attorney for that purpose, his charges not to be more than five dollars per hundred shares of stock held by said township, unless the lease is set aside, in which event he is to accept such compensation for his services as said trustees may deem reasonable.

This resolution and agreement to take effect upon the signing thereof by said trustees and said J. M. Estep.

Trustees { JAS. N. HAVERFIELD.
D. L. HUGHES.
P. LYNCH.
J. M. ESTEP.

Recorded March 5, 1886.

J. R. ROBERTS,
Township Clerk.

I hereby certify that this is a true copy as taken from the record.

J. R. ROBERTS,
Township Clerk.

EXHIBIT "D."

MEANS, O., *June* 5, 1885.

At a special meeting of the trustees of German township, all being present, on consideration said trustees employ J. M. Estep as their attorney to represent their stock in endeavoring to set aside said lease on the same terms as agreed on by the Cadiz township trustees, which is as follows:

282 MAY 16, 1885.

"Special meeting of Cadiz township trustees, all being present. On motion and after due consideration, it was unanimously resolved by said trustees that measures should be taken to have the lease of the Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company, which took effect May 1, 1873, rescinded, so that the stock held by said township in said last-named railway company may be made of some value, if possible, and that J. M. Estep be employed as our attorney for that purpose, his charges not to be more than five dollars per hundred shares of stock held by said township, unless the lease is set aside, in which event he is to accept such compensation for his services as said trustees may deem reasonable; this resolution and agreement to take effect upon the signing thereof by said trustees and said J. M. Estep.

JAS. N. HAVERFIELD,
D. L. HUGHES,
P. LYNCH, *Trustees.*"
(Signed) J. W. SLATES,
GEO. BECKLEY,
S. I. MACK, *Trustees.*
J. M. ESTEP.

I certify that the foregoing is a true copy of said resolution and agreement as taken from the record thereof in my possession.
March 27, 1886.

D. D. KAIL, *Clerk.*

THE STATE OF OHIO, *Harrison County,* } ss:

I, John M. Garven, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Josiah M. Estep, David L. Hughes, Patrick Lynch, James N. Haverfield, J. Howard Moore, Isaac Stewart, Wm. E. Sawvil, Charles W. Birney, J. Ross Roberts, Samuel I. Mack, George Beckley, John W. Slates, and Delancon D. Kail
283 were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by myself, and were subscribed by the said witnesses respectively in my presence, and were continued from day to day as above set forth; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

I further certify that all of said witnesses reside more than one hundred miles from the city of Columbus, State of Ohio.

In testimony whereof I have hereunto set my hand and official seal this 27th day of March, A. D. 1886.

[SEAL.] JOHN M. GARVEN,
Notary Public.

284 And on the 6th day of May, A. D. 1886, the following depositions were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition for Complainants.

UNITED STATES OF AMERICA, *Southern District of Ohio.* }

CHARLES MORAN, Plaintiff,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO., The Cincinnati and Muskingum Valley Railway Co., *et al.*, Defendants.

Case No. 210, pending in circuit court of the United States, southern district of Ohio, eastern division.

The above-named defendants will take notice that on Thursday, the 29th day of April, A. D. 1886, the complainant above named will take the deposition of Mathew Priest, J. H. Trainer, James McFarland, William B. Donaldson, William McD. Miller, G. A. Shane, and Ross White, sundry witnesses, to be used as evidence in the trial

of the above cause, at the office of James F. Dator, at Steubenville, in the county of Jefferson, in the State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

HOADLY, JOHNSON & COLSTON,
Solicitors for Complainant.

Depositions of sundry witnesses taken before me, P. P. Lewis, a notary public within and for the county of Jefferson, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the complainant in an action pending in the circuit court of the United States, southern district of Ohio, eastern division, in which Charles Moran is plaintiff and The Pittsburgh, Cincinnati
285 and St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company are defendants, George Hoadly, Jr., being present on behalf of complainant and J. M. Estep on behalf of defendants.

J. H. S. TRAINER, being first duly sworn, deposes and says:

Examination by Mr. HOADLY:

Question 1. Please state you name, residence, and occupation.

Answer. J. H. S. Trainer; residence, Steubenville; occupation, attorney-at-law.

Q. 2. Were you or not the counsel in the case in the common pleas court of Jefferson county, Ohio, in which Samuel Jeans, The Trustees of Steubenville Township, Jefferson County, Ohio, and others were plaintiffs and The Pittsburgh, Cincinnati & St. Louis Railway Company and The Cincinnati & Muskingum Valley Railway Company were defendants?

A. I was attorney for the Cincinnati & Muskingum Valley Railway Company.

Q. 3. Did you or not enter an appearance for that company?

A. I have no recollection of entering any appearance for the company. My impression is that I did not.

Q. 4. Did you or not file any answer, demurrer, or other pleading in that case on behalf of that company?

A. I did file a demurrer on behalf of the company—the Cincinnati & Muskingum Valley Railway Company.

Q. 5. Was that demurrer argued?

A. It was not.

Q. 6. What action did the court take upon that demurrer, if any?

A. I am unprepared to answer what action the court took on the demurrer, as at the time of the action of the court I was not the attorney of the Cincinnati & Muskingum Valley Railroad Company, and before the court heard the case I informed the court of my with-

drawal from the case. If I at the time withdrew the de-
286 murrer the record would show it, but whether I withdrew the demurrer at the time I am not now prepared to say.

Q. 7. Did you after that time have any further connection with the case or not?

A. I did not. My recollection is now that on the 29th of September, 1885, I was notified not to proceed further in the matter, as the trustee, Charles Moran, on behalf of the bondholders—if my recollection serves me right—had commenced a proceeding in the circuit court of the United States.

Q. 8. From whom did you receive the notice of which you speak?

A. I received the notice from Thomas D. Messler, president of the company.

Cross-examination by Mr. ESTEP:

Cross-Q. 1. I will ask you, Mr. Trainer, if when you stated in open court that you had no further connection in the case and did not feel authorized to argue the demurrer if you do not recollect that you also stated that neither did you feel authorized to withdraw the demurrer.

Ans. I think I so stated and in this language: That I was instructed to withdraw from the case, and that I did not feel authorized to withdraw or argue the demurrer, as I considered that I was not in the case. I think that was substantially what I stated.

Q. 2. I will ask you, then, if the demurrer and the validity of the petition or the case made by the petition was not then and there argued by Judge Ranney and myself.

A. I am not prepared to say what action the court took on the demurrer, but after I had made my statement, as above stated, to the court the case was proceeded with and was argued by Mr. Estep and Judge Ranney.

Q. 3. That argument was on the 6th of November, 1885, was it not?

A. I cannot give the date of the argument, but it was late in the fall, if my recollection serves me right, and may possibly have been about the 6th of November.

287 Q. 4. Do you recollect the day that the court rendered a decree in the case?

A. I do not.

Q. 5. When Mr. Messler wrote you that you need not take any further action in the case did he not also state that Charles Moran, the trustee for the bondholders, had declined to take any action in what we may call the Steubenville case and had concluded to bring his own case in the circuit court of the United States, at Columbus?

A. Some time about the 20th of September I wrote to Mr. Messler, the president of the company, that I ought to have some retaining fee in the case, as I had been to some expense and trouble in the matter, to which, on the 29th of September, I received a reply, stating that he had applied to the bondholders for money to prosecute the case; that they had declined, and that Charles Moran, the trustee, had commenced suit on behalf of the bondholders in the United

States court, and, as he had no funds to prosecute, to withdraw from the case, and he sent me a check for the amount that I had requested he should forward as a retainer. I receipted for the same, and that ended my connection with the case.

Redirect examination by Mr. HOADLY:

Q. 1. Have you that reply in your possession—the letter received from Mr. Messler?

A. I have it in my office.

Q. 2. Will you produce it and attach it to your deposition?

A. You may take a copy of it. I have given you the substance of the letter.

A correct copy of said letter is hereto attached to this deposition, marked "Exhibit A, deposition of J. H. S. Trainer, P. P. Lewis, notary public, April 29th, 1886."

J. H. S. TRAINER.

288 G. A. SHANE, being first duly sworn, deposes and says as follows:

Examination by Mr. HOADLY:

Question 1. Please state your name, residence, and occupation.

Answer. G. A. Shane; residence, Steubenville, Ohio; occupation, physician.

Q. 2. Have you any official connection with the city of Steubenville or township of Steubenville?

A. I am a member of the city council.

Q. 3. Were you, at the time the suit was brought, aware that a suit was to be brought on behalf of the city of Steubenville, as a stockholder of the Pittsburgh, Cincinnati and St. Louis Railway Company, to annul the lease of the Cincinnati and Muskingum Valley railroad?

A. I was not aware of suit being brought by the city of Steubenville, as a stockholder, to annul the lease. It was brought to my notice in meeting of council that action had been begun by stockholders of the Pittsburgh, Cincinnati and St. Louis Railway Company to annul the lease of the Muskingum Valley.

Q. 4. Was there or not an application made to the city of Steubenville to become a party to that suit?

A. There was a proposition made to the city council to become a party to this suit, I understand.

Q. 5. Was any action taken upon that proposition by the city council, to your knowledge?

A. A committee of three persons were appointed by the city council to inquire into the propriety of becoming parties in this action.

Q. 6. Who were the members of that committee?

A. The president of council, Mr. Donaldson; the city solicitor, Mr. Miller, and myself.

Q. 7. Did you inquire into the propriety of becoming a party to that suit?

A. At a meeting of the committee the matter of the propriety of becoming parties to the suit was discussed. Perhaps two
289 meetings was held. Then there was some discussion between the members of the committee that were not formal or official.

Q. 8. Was any report made by that committee to the city council?

A. Yes, sir.

Q. 9. What report was made?

A. I cannot give you that. The records of the action of the city council will show that better than I remember now. It was in substance, I think, recommending that the city should become parties—that is, the report in substance—the vital portions of it at least.

Q. 10. In investigating the propriety of becoming parties to that suit on the part of the city of Steubenville was any conference held by the committee with any person else than a member of the committee?

A. No, sir.

Q. 11. Was any communication held?

A. No, sir; not that I am aware of. None by the committee when I formed a part of it.

Q. 12. What investigation did the committee make into the merits of the case?

A. At the first meeting of the committee Mr. Donaldson and myself, feeling we were not capable of giving it the investigation from a legal standpoint that perhaps the matter required, requested the solicitor to look at that feature of it. The question that arose before the committee was whether or not the chances for securing an annulling of the lease were sufficient to justify the city of Steubenville in incurring the chances of expense in the costs of litigation. It was thought by this committee that if there was a fair and reasonable prospect of success the city council would be justified in becoming a party to the action to secure the annulling of the lease of the Muskingum Valley Railway Company, and we so requested the city solicitor to determine to the best of his knowledge and ability to investigate. The question with the committee was whether or not the chances were more favorable for success than for failure. If
290 more favorable for success, in the judgment of the city solicitor, we felt justified in recommending that the city should become a party to the action.

Q. 13. Do you know whether the city did or not become a party to the action?

A. The report of the committee was favorable to becoming a party to the action, a report which, if my recollection serves me correctly, was received and the recommendation adopted by the city council at a succeeding meeting.

Q. 14. At the time this took place the suit, as I understand you, had already been begun?

A. That is my recollection. I think that was my understanding of it at the time, that the suit had already begun, and the city of Steubenville was asked to become a party as representing a certain amount of stock in the organization.

Q. 15. For what reason was it that the city of Steubenville was asked to become a party?

A. My understanding of it was that the leased line of the Muskingum Valley Railroad Company, as held by the Pittsburgh, Cincinnati and St. Louis Railway Company, was a burden upon it; that the expense of its management was in excess of the income, and if the lease could be avoided the stock now held by the city of Steubenville—that was now worthless—would probably advance in price. That is the way the committee reasoned when the matter was under advisement with them before reporting.

Q. 16. The suit, however, you understand had already been begun? Why was it deemed by the committee necessary or desirable that the city should become a party to the suit?

A. I am not clear about the matter of the suit having been begun. That is my impression now, but I am not clear upon that.

Q. 17. If the suit had already begun why was it, if you recollect, that it should be deemed advisable for the city to become a party to a suit which, if prosecuted to success, would give the city every advantage that it could obtain, if itself a party, without incurring any risk?

291 A. My impression now is that such a course would be suggested upon the ground simply that the greater number of stockholders who would engage in this project—the greater the number the greater the prestige in such an action would be. A majority of the stockholders or a greater number of them would give more force of character to an action of this kind than a limited number. That is my impression now as to the reason that we introduce a recommendation of that kind at the time.

Q. 18. Is that your impression now as to the reason that did induce that?

A. No, sir; as I have stated, I am not clear at this time, nor have I any data that I was possessed of a knowledge that an action was already begun or was impending. That is simply my reason now that I would give.

Q. 19. What I wanted to get at was whether I could so refresh your memory as to suggest what the reason then was.

A. I could not say, because I am not clear as to how I was impressed with reference to the progress that this action had made, whether it was impending or had begun.

Q. 20. You say that the recommendation of the committee was adopted by the city council?

A. Yes, sir; that is my recollection. I think the records will so show.

Q. 21. Thereupon what step, if any, was taken by the city?

A. The matter was placed in the hands of the city solicitor with instructions to continue in such manner as he deemed most desirable. Counsel took no further action officially in the matter.

Q. 22. There terminated all connection of the counsel in the matter as such?

A. There terminated all connection of the committee as a committee.

Q. 23. And of counsel as such?

A. No, sir; I don't understand it so. I understood the matter still remained open with counsel, the progress of affairs to be
292 reported by the city solicitor as the matter went on. I cannot recollect whether the city solicitor made any further report or not. I think he did at one meeting. It was placed entirely in his hands, his discretion to be used.

G. A. SHANE.

MATTHEW PRIEST, being duly cautioned and sworn, deposes and says as follows:

Question 1. Please state your name, residence, and occupation.

A. Matthew S. Priest; residence, Steubenville, Ohio; occupation, painter.

Q. 2. What official connection, if any, have you with the city of Steubenville or the township of Steubenville?

A. None at present.

Q. 3. Had you any such connection at the time the suit of Samuel Jeans and others against The Pittsburgh, Cincinnati and St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company was brought or proposed to be brought?

A. I was one of the township trustees.

Q. 4. Was any application made to you as one of the township trustees to cause the township of Steubenville to become a party or to join in prosecuting the suit to which I have before referred?

A. Well, yes; there was.

Q. 5. By whom was this application made?

A. By Mr. Estep, of Cadiz. I never made any reply to him at all. I consulted with the other trustees, and we concluded if there was anything to be done at all to put it in the hands of the city solicitor. We didn't propose to spend any money of the funds for an uncertainty. We had none to spend, in the first place, and concluded just to drop the thing. If the city solicitor would take it in hand he might do so. That was all that was ever done in the case, as far as we, as township trustees, were concerned.

Q. 6. Then, if I understand your answer, you placed the matter in the hands of the city solicitor?

A. If he thought it necessary to take any action. We thought
293 it was not necessary to take any action, for we had no money. We thought it unnecessary to throw away good money for that when we didn't know there was anything there for us. If we had any idea that there was anything in it we would have become parties.

Q. 7. Was any further action taken?

A. We just merely conversed when we came together. We had no meeting about it. We thought there was nothing in it for us.

Q. 8. What information, if any, did you have about the merits of the case?

A. It was merely stated there was an action going to take place between the Pittsburgh, Cincinnati and St. Louis Railway Company and the Muskingum Valley Company, and wanted us to become

parties. We declined, as far as we were concerned personally; but left it in the hands of Mr. Miller, the city solicitor, if he thought it best to do so, to go on with it.

Q. 9. Did you learn or ascertain anything about this litigation from any person except Mr. Estep?

A. We paid so little attention to it that we, in fact, made no inquiry into it at all. I was so dumb about the matter that I was asked by two or three what this suit was and told them I didn't know. In fact, I didn't.

Q. 10. Then if Mr. Miller, the city solicitor, made the township of Steubenville a party to the suit or consented that the township of Steubenville should be made a party to the suit it was without your knowledge as a trustee?

A. Yes, sir; only, as I said, if he thought it advisable he might do so.

Q. 11. Did you have any conversation or any communication with any person or receive any communication from any person other than Mr. Estep or Mr. Miller about this litigation?

A. I conversed with one or two about it—one or two that was probably interested in the case, held bonds. One asked me if I had Mr. Estep's letter. I told him I did not know where it was—whether I had given it to Mr. McFarland or filed it away, but that I
294 knew nothing about it; that there was nothing in it, and therefore I thought it was not necessary to bother our heads about it.

Cross-examination by Mr. ESTEP, for plaintiffs:

Question 1. You did receive a letter from me, as you say?

Answer. Yes, sir.

Q. 2. You have not got that letter now?

A. I don't think I have. I have no recollection of where it is.

Q. 3. As for yourself, I understand you—you did not examine into the merits of the case?

A. No more than just what the letter stated.

Q. You did not examine it enough to have any idea whether this lease was a bad thing for the township or not?

A. We didn't know enough about that matter to know whether it was a bad thing or not. We knew the stock was perfectly worthless at the present time. Whether it would be a benefit to us or not, we couldn't come to that conclusion.

Q. 5. As to whether it would be a benefit or not, you turned the matter over to the city solicitor to examine into and to do as he thought best?

A. Yes, sir.

MATTHEW S. PRIEST.

JAMES MCFARLAND, being duly cautioned and sworn, deposes and says as follows:

Examination by Mr. HOADLY:

Q. 1. State your name, residence, and occupation.

A. James McFarland; residence, Steubenville, Ohio; occupation—I have no regular occupation; am a gardener in summer.

Q. 2. Have you any official connection with the city of Steubenville or the township of Steubenville?

A. I am one of the township trustees.

Q. 3. Were you one of the township trustees at the time the
295 suit in which Samuel Jeans and others are plaintiffs and The Pittsburgh, Cincinnati and St. Louis Railway Co. and The Cincinnati and Muskingum Valley Railway Company are defendants was begun?

A. Yes, sir; I was.

Q. 4. Were you aware that a proposition or suggestion was made that the township of Steubenville should become a party to that litigation?

A. No, sir; nothing personally; only a letter I saw that Mr. Priest received and handed me is all that I knew.

Q. 5. Did you hold any communication with any person about that litigation?

A. No, sir—that is, I held nothing only through an attorney. I refused to do anything about it as a trustee myself.

Q. 6. You say you saw a letter which Mr. Priest had?

A. Yes; he gave it to me.

Q. 7. Is that the letter which he testified to as receiving from Mr. Estep?

A. Yes, sir; that is the same letter that I allude to.

Q. 6. Did you have any other information with respect to the origin or merit of that suit than what was contained in that letter?

A. No, sir.

Q. 9. What action did the township trustees, or did you as one of the township trustees, take upon the subject contained in that letter?

A. We took no action at all. We just came to the conclusion to give it into the hands of the city solicitor, as we thought we were unable to take it in hands ourselves. We just referred it to him.

Q. 10. Was this referring the matter to the city solicitor done by the township trustees as an official act of the board of township trustees?

A. Just referred it to his judgement as a board of trustees—that is, to take action on it as he deemed best. He was the city solicitor for the city, and we just gave the matter to him.

296 Q. 11. Was any further action taken by the board of trustees or any further action had with the board of trustees on this subject after it was referred to the city solicitor than you have already stated?

A. No, sir; not to my knowledge.

Q. 12. If the city solicitor, Mr. Miller, or any one else made the township of Steubenville a party to this litigation or joined the township of Steubenville in the litigation as plaintiff it was without any further action on your part or on that of the board of trustees, was it or not?

A. I don't know that I could answer that any further than the

way that I have. We just referred the matter to him, and that was all that was ever done about it as a board of trustees. We consulted together and referred the matter to him.

JAMES McFARLAND.

WILLIAM McDONALD MILLER, being first duly sworn, deposes and says:

Examination by Mr. HOADLY:

Question 1. Please state your name, residence, and occupation.

Answer. William McD. Miller; residence, Steubenville; occupation, attorney.

Q. 2. Have you now any official connection with the city of Steubenville?

A. I am city solicitor at present, and have been for two years past.

Q. 3. Please state whether at the time the suit was brought, in which Samuel Jeans and others were plaintiffs and The Pittsburgh, Cincinnati and St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company were defendants, which is now pending in the circuit court of Jefferson county, Ohio, you were aware that the suit was to be brought.

A. Yes, sir; I was aware that suit would be brought.

Q. 4. Please state whether or not any proposition or sug-
297 gestion was made to you, as city solicitor, that the city of Steubenville should join as a plaintiff in that suit; and, if so, what.

A. The first information that I had of the suit was a letter turned over to me by Mr. Donaldson, president of the council. The letter was from Mr. Estep, of Cadiz. He stated in the letter that Samuel Jeans and German township, of Harrison county, and other parties or other stockholders of the Steubenville and Indiana railroad were about to bring an action to set aside the Muskingum Valley lease, and suggested in that letter that inquiry be made by Mr. Donaldson of the merits of the case, and also suggested that the lease was not a paying one, and that the parties bringing the suit either had protested against the entering into of the lease—or I don't know just that, or whether they had been silent; at any rate, the suggestion was made that Mr. Donaldson, as president of council, should bring the matter up before council—should make inquiry into the merits of the suit. The letter suggested also that Mr. Estep was going ahead as attorney, and it intimated that we were parties in interest and would likely be joined in the suit. That is my best recollection of the letter.

Q. 5. What action, if any, did you take in consequence?

A. The letter was turned over to me, and the suit was afterwards brought, and we were joined as plaintiffs. The first action I took in the matter was to examine the pleadings in the case. However, before that time I made inquiry about this lease, and the information that I received coincided with the information given us by Mr. Estep. I found that this lease was a severe loss to the company. I also had information that other leases were a little against our in-

terest, and the best information I had was that this lease was entered into by the Pan Handle Company when Judge Jewett was president of the company, and at that time, I think, his brother was president of this Muskingum Valley railroad. My information was that both Jewetts had some interest in this road, and were disposed to bolster this road onto the Pan Handle route.

298 Q. 6. From whom did you receive this information or from what source did you obtain it?

A. I made general inquiry. It was the talk about town. I received scraps of it from different persons. I don't know who all I talked to, but Mr. Donaldson had made some inquiry himself, and from him I received most of my information. Really, I don't recollect who he had the information from, or whether he knew some of the facts himself. My impression is that he did know some of the facts himself.

Q. 7. Then, in consequence of obtaining this information, what, if anything, did you do?

A. I reported the matter to Mr. Donaldson, and had several conversations with him about it. The suit was brought, and I examined the petition the next thing, and I watched the progress of the suit.

Q. 8. Did you represent the city of Steubenville in that litigation?

A. Not directly—not as an attorney of record. I understand under the State law I suppose it is my duty to look after such matters. I supposed, of course, we would be joined as parties, and were.

Q. 9. Did you or not act on behalf of the township of Steubenville?

A. Yes, sir.

Q. 10. Did you, prior to the bringing of the suit, consent, on behalf of the city of Steubenville and township of Steubenville, that they should be joined as plaintiffs?

A. My best understanding of the matter was this: That we were parties in common interest, and that we would likely be joined with the other parties, and the letter was simply about fees. Mr. Estep was communicating what compensation he would expect from the township and from the city.

Q. 11. Mr. Estep, as an attorney-at-law, had no authority to join the city and township as plaintiffs without their consent?

A. Well, that is a question of law.

299 Q. 12. Was such consent given on behalf of the city and township?

A. I have stated that my best recollection is that the letter of Mr. Estep suggested that we would be joined as plaintiffs in the suit, and I met Mr. Estep in the city afterwards, and also examined the papers, and possibly on one or two occasions reported to council—not reports in writing, but some slight statement; and I also at different times had conversations with Mr. Donaldson and Dr. Shane. We were a committee, though it had only one meeting. As far as the township is concerned, Mr. McFarland was the member of the board that came to me first and asked what we were going to do about the matter. I told him I did not know at that time. He

said he thought they would act possibly as we did, and he suggested to me that I would attend to the matter, and asked me what I would charge the trustees for attending to it. It was represented to them that their one hundred thousand dollars' worth of stock might be worth something. I suppose it was a very similar letter to the one Mr. Donaldson turned over to me. I afterwards talked to Mr. Priest and the other member of the board and learned from them that they had concluded to leave the matter entirely with me.

Q. 13. You say Mr. Estep's letter suggested what compensation he would expect. Do you know what has become of the letter?

A. The letter was turned over to me, and I suppose it is in my office. I have had two or three letters from Mr. Estep. That letter was addressed to Mr. Donaldson, and my recollection is that I have it.

Q. 14. I am referring to the one addressed to Mr. Donaldson. Will you produce it, so that a copy of it may be taken and attached to your deposition?

A. Yes, sir.

A correct copy of this letter is hereto attached to this deposition, marked "Exhibit B, deposition of William McD. Miller, P. P. Lewis, notary public, April 29, 1886."

300 Q. 15. Please state whether or not Mr. Estep was the attorney of record for the city of Steubenville in that case.

A. Yes, sir. I believe that R. P. Ranney was also joined with him, but I had no correspondence with Judge Ranney at that time.

Q. 16. Did you see the letter which Mr. Estep addressed to the trustees of Steubenville township?

Ans. No, sir; I didn't. Mr. McFarland told me that Mr. Priest had it, and told me the contents, and told me the amount of compensation, and I know it to be a similar letter.

Cross-examination by Mr. ESTEP:

Question 1. Were you present at the argument in common pleas court in November last?

Answer. Yes, sir. I was present during the argument.

Q. 2. Do you recollect who argued the case?

A. I recollect that the first thing that transpired was an announcement from Mr. Trainer, as he has already testified to, and then, possibly, some business intervened, and the case was argued by Mr. Estep and afterwards by Judge Ranney. I think Mr. Estep made the first argument.

Q. 3. I will ask you to state whether the case generally was fully argued.

A. I thought all the questions involved were argued exhaustively. I don't recollect the time consumed, but I know the arguments were of considerable length, and I recollect that there was a question or two propounded by the court.

Q. 4. The court called attention of counsel to certain points in the line of argument?

A. Yes, sir; certain law points.

Q. 5. Have you any recollection about how long it was before the court finally decided the case and made the decree?

A. I don't know when the decree was spread upon the journal. My best recollection is that an adjournment or recess of this
301 court intervened. I am not positive about that, however. That is my impression—that the court adjourned over several days. I think a week, anyway.

Q. 6. Do you recollect of any intervening case of sickness and the death of the judge's grandchild?

A. I recollect there was a good deal of sickness in his family, but I don't recollect that it occurred at that time.

Redirect examination by Mr. HOADLY:

Q. 1. Who did Judge Ranney represent?

A. Judge Ranney represented the plaintiffs in the case, and his name is on the petition as one of the attorneys for plaintiffs.

WILLIAM D. McMILLER.

ROSS WHITE, being first duly sworn, deposes and says as follows:

Examination by Mr. HOADLY:

Question 1. Please state your name, residence, and occupation.

A. Name, Ross White; residence, Steubenville, Ohio; occupation, clerk of courts.

Q. 2. Do you recollect or can you state on what day in November last the October term of common pleas court of Jefferson county adjourned for the term finally.

A. I can tell by referring to the journal. Saturday, December 12.

Q. 3. Can you state how long before that it was known that the court would adjourn on that day.

A. No, sir; I cannot.

Q. 4. If it was known at all in advance?

A. Well, I can't tell you about that.

Q. 5. Was it or not known before that day that the court would adjourn on that day?

A. I think it is quite likely it was known, but just how long it was known I could not answer.

Cross-examination by Mr. ESTEP:

Q. 1. Your journal will show the date of the decree when rendered in the case of Samuel Jeans and others against the Pan Handle rail-road?

301½ A. Yes, sir.

Q. 2. Look and see the date.

A. Friday, November 24.

Q. 3. Do you recollect how long before that it was that Judge Ranney and myself argued the case—before the decree was rendered?

A. I do not.

Q. 4. Have you any idea?

A. It could not have been any very great length of time before that.

Q. 5. Was it on or about the sixth day of November? Have you a recollection of Judge Hance reserving the matter, of losing a grandchild, and having to go home?

A. Yes, sir.

Q. 6. Was that not after the case was argued and before the decree was rendered?

A. I think it was.

Q. 7. And was not the case argued on or about the sixth of November?

A. I am not able to say as to the date.

ROSS WHITE.

WILLIAM DONALDSON, being first duly sworn, deposes and says as follows:

Examination by Mr. HOADLY:

Q. 1. State your name, residence, and occupation.

A. W. B. Donaldson; Steubenville, Ohio; president of the Steubenville pottery.

Q. 2. Have you any official connection with the city of Steubenville?

A. President of the city council.

Q. 3. Were you president at the time the action was brought by Samuel Jeans and others—among them the city of Steubenville—in the court of common pleas of Jefferson county against the Pittsburgh, Cincinnati and Muskingum Valley Railway Company?

A. I don't know as to dates; but I have been president for a year of the council.

302 Q. 4. Do you recollect that suit of which I have spoken?

A. Nothing further than I believe my attention was called to it by the solicitor, is the only recollection I have of it.

Q. 5. Do you remember whether at the time the suit was brought you knew the circumstances under which it was brought?

A. No, sir; I believe not. I believe I can say now I don't know what the circumstances were in connection with it.

Q. 6. Do you recollect how the matter was first brought to your attention?

A. My attention was first called to it, to the case, by a letter received from some party—I think Mr. Estep—calling attention to it.

Q. 7. What did you do in consequence of receiving that letter?

A. I passed it over to the solicitor for his judgment and action. There was nothing further transpired. I passed it to him and told him to exercise his power and judgment in the matter, and he done so.

Q. 8. Did you do anything further in the matter after that?

A. No, sir; I believe not. I think I did not do anything personally until the matter was brought up in council, and then it was referred to a committee.

Q. 9. Who were on that committee?

A. The city solicitor, Dr. Shane, and myself composed the committee.

Q. 10. Did you, as a member of that committee, make any investigation into the merits of that action?

A. The committee again referred it back to the solicitor. At all times it has been referred back to him, so far as I remember. All cases of this kind we referred back to the solicitor.

Q. 11. What advice did the city solicitor give as to the propriety of bringing this suit?

302½ A. I cannot recollect what his statement was at the time. I have no recollection as to what he said. He made some remarks in relation to it, and then it was finally referred back to him by council and also by this committee to take whatever action he deemed necessary.

Q. 12. You do not recollect what advice he gave as to the propriety of bringing the suit?

A. I don't recollect the words he used.

Q. 13. Or the substance of it?

A. No, sir; I don't remember, for the matter was entirely in his hands, and it was a general conversation in council at the time he made his remarks. I cannot remember.

Q. 14. Personally did you or not take any further action on this matter—personally or as member of council?

A. No, sir.

Cross-examination by Mr. ESTEP:

Q. 1. You do not recollect any special information given to you by the solicitor after he had given examination into the matter? Don't you recollect that his recommendation was favorable, and that he thought the Muskingum Valley lease ought to be set aside as being a drain on the Pan Handle road?

A. I have some recollection as to something of that kind—as to his having said he thought such a thing. I have not refreshed my memory, but he did say something about he thought it was best; but I took so little interest in the proceeding I have forgotten. I left it entirely in his hands.

Q. 2. I understand that this committee, when they were appointed, left the matter entirely to the solicitor?

A. Entirely so; yes, sir; as we do with all such cases when brought up in council.

Q. 3. I will ask you to refresh your recollection whether this committee did not make that report to the council—that it had been left to the solicitor—and that council adopted that report.

A. Yes, sir; the committee reported back to council it had
303 been thrown back into his hands. That would have been necessary to have relieved the committee as to the responsibility resting with them. They reported that it was reported back to the solicitor.

Q. 4. Do you remember whether you were present in common pleas when that case was argued or not?

A. No, sir.

W. B. DONALDSON.

(EXHIBIT "A," Deposition of J. H. S. Trainer. P. P. Lewis, Notary Public. April 29, 1886.)

Cincinnati & Muskingum Valley Railway Company, office of the president.

PITTSBURGH, *September* 29, 1885.

J. H. S. Trainer, Esq., Steubenville, Ohio.

DEAR SIR: I duly received your favor of the 12th inst.; note particularly your request for the payment of your retaining fee in suit of Samuel Jeans *et al. v.* P., C. & St. L. R'y Co. and C. & M. V. R'y Co., in the Jefferson county common pleas court, Ohio, for $100.

I send herewith a check of treasurer of Penna. Company for that amount; also a voucher of mine, which please receipt and return to me.

In this connection I would say that the Cincinnati & Muskingum Valley Railway Company is entirely without means wherewith to defend the above suit. I have written to the bondholders requesting them to furnish money for this purpose, as they are the parties most directly interested therein. They have, however, declined to do so, and, on the contrary, a large proportion of them, through Mr. Charles Moran, trustee, have commenced suit in the United States court at Columbus for the purpose of enforcing their rights as they construe them. I have therefore no alternative but to request you to withdraw from the suit in the Jefferson county common pleas court and let that court take such action in the premises as it may deem proper, as the Cincinnati and Muskingum Valley Railway Company is unable to do anything further in the matter.

Yours truly, THOS. D. MESSLER, *President.*

304 (EXHIBIT "B," Deposition of William McD. Miller. P. P. Lewis, Notary Public. April 29, 1886.)

CADIZ, OHIO, *June* 10, 1885.

W. B. Donaldson, Esq., president of city council, Steubenville, Ohio.

DEAR SIR: I represent trustees of Cadiz township, Rumley township, German township, and many other stockholders in P., C. & St. L. R. R. Co. and desire to file petition in your common pleas to have the lease of Muskingum Valley R. R. Co. to P., C. & St. L. R. R. Co. set aside for illegality. I think there is no doubt about its illegality. Unless it is set aside our stock in the P., C. & St. L. will be forever worthless. It was executed in 1873 and has been effectually tried for twelve years, and the result is a loss to lessee company of near one million in that time; the last year over $140,000. I have demanded the company to take measures to have it set aside, and Mr. Dunbar, Esq., of your city, knows what the grounds are. If you will call on him and request it he will state them to you more fully than I can write them in a brief letter. What I desire is that your council, and also your township, allow me to represent your stock

in this proceeding. If we succeed it will be a grand thing for the stockholders; if we should fail the cost will be but trifling, say not to exceed five cents per share. If we succeed I will leave the compensation to be whatever you may deem reasonable, but unless we succeed our stock will be forever worthless, for the lease is a 99-year one.

Yours very truly, J. M. ESTEP.

THE STATE OF OHIO, } ss:
Jefferson County, }

I, P. P. Lewis, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Matthew Priest, J. H. S. Trainer, James McFarland, William B. Donaldson, William McD. Miller, G. A. Shane, and Ross White were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed as above set forth were reduced to writing by W. T. Campbell, a disinterested person, and were subscribed
305 by the said witnesses respectively in my presence; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

I further certify that all of aforesaid witnesses live more than one hundred miles distant from the place of trial of said cause.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal this 4th day of May, A. D. 1886.

P. P. LEWIS,
Notary Public.

THE STATE OF OHIO, } ss:
Jefferson County, }

I, Ross White, clerk of the court of common pleas of the county and State aforesaid, do hereby certify that P. P. Lewis, Esq., is a notary public of said county, duly commissioned and qualified, and as such legally authorized to administer oaths and take acknowledgments of deeds and other instruments; that his commission is dated on the 6th day of December, 1883, and will expire on the 5th day of December, 1886.

[SEAL.] In testimony whereof I have hereunto set my name and affixed the seal of said court, at the clerk's office, in Steubenville, this 5th day of May, A. D. 1886.

ROSS WHITE, *Clerk.*

306 And afterwards, to wit, on the 18th day of May, A. D. 1886, the following depositions were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Depositions for Complainants.

Deposition of James M. Mckee.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division.

Circuit Court of the United States.

CHARLES MORAN, Plaintiff,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY Company, The Cincinnati and Muskingum Valley Railway Company, *et al.*, Defendants. } In Equity.

The defendants will take notice that on Wednesday, the 24th day of March, A. D. 1886, the complainant above named will take the depositions of James M. McKee — sundry witnesses, to be used as evidence on the trial of the above cause, at the office of Messrs, Powell & Ricketts, at Columbus, in the county of Franklin, State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

HOADLY, JOHNSON & COLSTON,
Solicitors for Complainant.

Depositions of sundry witnesses taken before me, a notary public, of the county of Franklin, State of Ohio, in a cause pending in the circuit court of the United States, southern district of Ohio, eastern division, wherein Charles Moran is plaintiff and The Pittsburgh, Cincinnati and St. Louis Railway Company is, etc., *et al.*, defendant, pursuant to the annexed notice and at the time and place therein mentioned, to be read as evidence in behalf of the complainant on the trial of the aforesaid cause.

307 Present: George Hoadly, Jr., on behalf of plaintiff, and Chauncey N. Olds, on behalf of defendants.

JAMES M. MCKEE, of lawful age, being by me first duly sworn as hereinafter certified, deposes and says as follows:

Question 1. State your name, age, occupation, and place of residence.

A. My name is James M. McKee. I am sixty-eight years of age. I am not in any business at present, and my place of residence is Columbus, Ohio.

Q. 2. Please state whether or not you have bought or sold any of the bonds issued by the Cincinnati and Muskingum Valley Railway Company under a mortgage to Charles Moran, the complainant in this case; and, if so, when and in what capacity.

A. In 1881, in New York, I bargained for five first-mortgage bonds of the Cincinnati and Muskingum Valley Railway Company

and had these bonds delivered to Corliss and Company, who paid for the same for Mr. McKee.

Q. 3. From whom did you buy those bonds?

A. I bought them at the office of A. M. Kidder and Company, 18 Wall street, New York.

Q. 4. Please state whether or not you were, at the time of making their purchase, acquainted with the terms of the lease from the Cincinnati and Muskingum Valley Railway Company to the Pittsburgh, Cincinnati & St. Louis Railway Company with respect to the guarantee of interest upon these bonds; and, if so, how you became acquainted.

A. Some time before this purchase I learned from Mr. Jewett, who was then president of the Pittsburgh, Cincinnati and St. Louis Railway Company and, I think, was also president of the Cincinnati and Muskingum Valley railway, the particulars of the ninety-nine years' lease, if I remember it right, and the security afforded to the holders of these bonds. At the time of the purchase in New York I examined a printed statement describing the lease and guarantee of these bonds, in which it was stated the entire issue amounted to not over twelve thousand dollars per mile. This was re-
308 garded as a low rate of bonding, and led me to believe that under the guarantee and lease the security was very good. I further inquired at the office of Moran & Brother, on William street, New York, when Mr. Moran made me a statement confirming my impressions in regard to security of the bonds under the lease.

(Answer excepted to by Mr. Olds, solicitor for the Pittsburgh, Cincinnati and St. Louis Company, as irrelevant and incompetent.)

Q. 5. Please state whether or not your knowledge of the terms of the lease was an inducement for you to purchase these bonds.

(Question excepted to by Mr. Olds on the ground of incompetency.)

A. I had great confidence in the carrying out of any contract made by the Pittsburgh, Cincinnati and St. Louis Railway Company in its lease with other lines, and was relying on the guarantee contained or implied in the lease for the security and ultimate payment of these bonds, and would not otherwise have purchased them.

(Answer excepted to by Mr. Olds.)

Q. 6. Please state whether or not you still hold these bonds.

A. Yes; still hold these bonds.

Q. 7. What was Mr. Jewett's first name? Which Mr. Jewett was it?

A. Hugh J. Jewett.

(The cross-examination of the witness on behalf of the Pittsburgh, Cincinnati and St. Louis Company is postponed under the arrangement with Mr. Harrison.)

JAMES M. McKEE.

THE STATE OF OHIO, } ss:
Franklin County, }

I, Samuel L. Black, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named James M. McKee was by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him respectively subscribed as above set forth was reduced to writing by Mr. ——, and also
309 so written in the presence of the witness aforenamed respectively, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified.

I do further certify that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and seal of office this 16th day of May, A. D. 1886.

SAMUEL L. BLACK,
Notary Public.

The taking of depositions under the above notice is by consent postponed until Tuesday, the 6th day of April, 1886.

HOADLY, JOHNSON & COLSTON,
Solicitors for Complainant.

C. N. OLDS,
Counsel for P., C. & St. L. Railway Co.

310 And afterwards, to wit, on the 19 day of May, A. D. 1886, the following depositions for complainant were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of Matthew Priest.

UNITED STATES OF AMERICA, }
Southern District of Ohio. }

CHARLES MORAN, Plaintiff,
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO., THE Cincinnati and Muskingum Valley Railway Co., *et al.*, Defendants.

Case No. 210, pending in circuit court of the United States, southern district of Ohio, eastern division.

The above-named defendants will take notice that on Friday, the 12th day of May, A. D. 1886, the complainant above named will take the depositions of Matthew Priest and William McD. Miller, sundry witnesses, to be used as evidence in the trial of the above cause, at the office of P. P. Lewis, attorney-at-law, at Steubenville, in the county of Jefferson, in the State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking

of the same will be adjourned from day to day, between the same hours, until they are completed.

HOADLY, JOHNSON & COLSTON,
Attorneys for Complainant.

Depositions of sundry witnesses taken before me, P. P. Lewis, a notary public within and for the county of Jefferson, in the State of Ohio, pursuant to the annexed notice and on the agreement of parties, on the 15th day of May, 1886, and at the place therein specified, to be read in evidence on behalf of the plaintiff in an action pending in the circuit court of the United States, southern district of Ohio, eastern division, in which Charles Moran is plaintiff and The Pittsburgh, Cincinnati and St. Louis Railway Company and The
311 Cincinnati and Muskingum Valley Railway Company are defendants, George Hoadly, Jr., being present on behalf of plaintiff, and —— —— on behalf of defendants.

MATTHEW PRIEST, of lawful age, being first duly cautioned and sworn as hereinafter certified, deposes and says:

Question 1. State your name, residence, and occupation.

Answer. Matthew Priest; residence, Steubenville; occupation, printer.

Q. 2. Have you been examined before as a witness in this case?

A. Yes, sir.

Q. 3. Will you please state whether any proposition was made to you that if the township of Steubenville would join as a plaintiff in the case in which Samuel Jeans and others are plaintiffs and The Pittsburgh, Cincinnati and St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company are defendants that the township would not have to pay any costs?

A. Not to my knowledge.

Q. 4. Was any suggestion of the kind made to you?

A. Not to my knowledge.

Q. 5. Did any one ever say anything to you about who would have to pay the costs?

A. There was no costs ever mentioned—not to me—except what is in the letter.

Q. 6. I was not speaking of the costs of the fees, but who would have to pay the costs if suit was not successful.

A. There never was anything of that kind mentioned.

Q. 7. By anybody?

A. No, sir; not to my knowledge; nor we as trustees never conferred about it, for we had no intention of getting into any litigation at all.

MATTHEW S. PRIEST.

312 WILLIAM MCDONALD MILLER, being by me first duly sworn as herein certified, deposes and says:

Question 1. Will you please state your name, residence, and occupation?

Ans. William M. Miller; residence, Steubenville, Ohio; occupation, attorney and city solicitor.

Q. 2. Were you present at the trial of the case of Samuel Jeans and others against the Pittsburgh, Cincinnati and St. Louis Rail way Company and the Cincinnati and Muskingum Valley Rail way Company last fall?

A. Yes, sir—that is, I was there part of the time.

Q. 3. Were you there sufficiently so as to know by whom the case was argued?

A. Yes, sir; by Judge Ranney and Mr. Estep. I think Judge Ranney spoke first. When the case was first called up I was present, and Mr. Trainer made some remarks that I heard and recollect, and then I afterward went to my office before the arguments began. However, during the time that Mr. Trainer engaged the attention of the court Mr. Estep joined in, possibly, with a few remarks; then, when I returned to court, my best recollection is that Judge Ranney was arguing the case in behalf of the plaintiff. Then Mr. Estep followed in argument. That is my recollection. I heard both of them, but, possibly, did not hear either argument complete.

Q. 4. Was anybody present representing the Pittsburgh, Cincinnati and St. Louis Railway Company?

A. I think Mr. Dunbar was in court. My recollection is that reference was made to an answer that they had on file some way or other. I don't recollect, though, that he made any remarks.

Q. 5. Was Mr. Brooks present?

A. I do not know him personally. I have never seen him. I would state, my best recollection is, that I knew everybody present, and I do not believe he was there.

Q. 6. Do you know Robert Sherrard?

A. Yes, sir.

Q. 7. Do you know what his connection is with the Pittsburgh, Cincinnati and St. Louis Railway Company?

313 A. I understand that he is a director of the road. I have understood all along that he has been director for quite a number of years; also a large stockholder.

WILLIAM McD. MILLER.

THE STATE OF OHIO, } ss:
Jefferson County, }

I, P. P. Lewis, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Matthew L. Priest and William M. Miller were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by W. L. Campbell, a disinterested person, and were subscribed by the said witnesses respectively in my presence, and were continued from day to day, as above set forth; that said depositions were taken by agreement of the parties on the 15th day of May, 1886, and at the place specified in the notice hereto attached, and that I am not counsel

attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal this 15th day of May, A. D. 1886.

P. P. LEWIS,
Notary Public.

And afterwards, to wit, on the 22d day of May, A. D. 1886, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

O. B., 63.

Upon application of the complainant leave is given him to file a replication herein forthwith, & the same is filed.

314 And afterwards, to wit, on the 22d day of May, A. D. 1886, by consent first had by the court, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

United States Circuit Court, Southern District of Ohio, Eastern Division.

CHARLES MORAN *vs.* THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY *et al.*	No. 210. In Chancery. Replication.

Now comes the said Charles Moran, complainant, and says that the matters and things set forth in his original amended and supplemental bill of complaint are true in substance and in matter of fact, and that the matters and things set forth in the answer of Samuel Jeans and others & in the answer of the Pittsburgh, Cincinnati & St. Louis Railway Company to the amended and supplemental bill, as well as to the original bill filed by him in the above-entitled case contrary thereto, is untrue, and this he is ready to make appear as by this court shall be directed.

HOADLY, JOHNSON & COLSTON,
Sol'rs for Compl'ts.

315 And afterwards, to wit, on the 30th day of June, A. D. 1886, an entry was made upon the journal of said court in words and figures following, to wit:

O. B., 65.

On motion of Samuel Jeans and others, who heretofore filed a joint and several answer in this cause, and also on motion of the Pittsburgh, Cincinnati & St. Louis R'y Company, who heretofore filed a separate answer herein, it is ordered that the said defendants have leave to file amended and supplemental answers herein by the tenth day of August next.

And by consent of parties it is ordered that the time for taking testimony herein be extended until the first day of November next.

316 And afterwards, to wit, on the 5th day of Nov., A. D. 1886, the following amended and supplemental answer of the P., C. & St. L. R'y Co. was filed in the clerk's office of the said court, clothed in the words and figures following, to wit:

Amended and Supplemental Answer of the P. C. & St. L. Railway Company.

Circuit Court of the United States, Sixth Circuit, Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY and Others. } No. 210. In Equity.

The amended and supplemental answer of the Pittsburgh, Cincinnati and St. Louis Railway Company to the original and to the amended and supplemental bill of complaint of Charles Moran, complainant.

Now comes this defendant and by leave of the court here first had and obtained, and by way of amended and supplemental answer to the original and to the amended and supplemental bill of complaint, states that since the filing of its original answer herein, and also since the filing of its answer to the amended and supplemental bill of complaint herein, to wit, on the — day of May, A. D. 1886, the said suit of Samuel Jeans and others, plaintiffs, against the
317 railway companies, defendants, described in the original bill herein and alleged in said amended and supplemental bill to be pending in the circuit court of the State of Ohio for the county of Jefferson, by appeal taken by said Evan J. Henry from the judgment of the court of common pleas of said Jefferson county, came on to be heard in said circuit court of the State of Ohio for the county of Jefferson upon the motion of the plaintiffs in said suit to dismiss the appeal of the said Evan J. Henry, and the said court, having heard the evidence and arguments of counsel in behalf of the plaintiffs and of the defendant Evan J. Henry, and being fully advised in the premises, did sustain said motion and did order and adjudge that said appeal be, and the same was thereby, dismissed at the costs of the said Evan J. Henry. A duly certified copy of said order and judgment of said circuit court of the State of Ohio for the county of Jefferson dismissing said appeal is herewith filed, marked "Exhibit A," and made a part hereof as fully as if recited at length and set forth herein.

This defendant therefore avers and insists that the said decree of the court of common pleas of Jefferson county, Ohio, mentioned in the supplemental answer of this defendant, and a copy whereof is therewith filed, declaring said lease null and void and restraining

and enjoining the said railway companies, is in full force and is valid and binding upon this defendant.

C. N. OLDS & J. T. BROOKS,
Att'ys for Pittsburgh, Cincinnati and St. Louis R'y Company.

318 STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

J. T. Brooks, being duly sworn, says that he is the general counsel of the foregoing defendant, The Pittsburgh, Cincinnati and St. Louis Railway Company, said company being a corporation of the States of Ohio, West Virginia, and Pennsylvania, and that the facts stated in the foregoing amended and supplemental answer of said company are true, as he verily believes.

J. T. BROOKS.

Sworn to by the said J. T. Brooks and by him subscribed in my presence this 4th day of August, 1886.

W. C. BOYLE,
[SEAL.] *Notary Public.*

And afterwards, to wit, on the 7th day of Nov., A. D. 1886, the following amended and supplemental answer of Samuel Jeans and others was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Amended and Supplemental Answer of Samuel Jeans and Others.

Circuit Court of the United States, Sixth Circuit, Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO. & Others. } In Equity. No. 210.

319 The joint and several and separate amended and supplemental answers of Samuel Jeans, The Trustees of Cadiz Township, Harrison County, Ohio; The Trustees of Rumley Township, Harrison County, Ohio; The Trustees of German Township, Harrison County, Ohio; The Trustees of Steubenville Township, Jefferson County, Ohio, and The City of Steubenville to the original and amended and supplemental bill of complaint of Charles Moran, complainant.

Now come these defendants respectively, and by leave of the court first had and obtained, and by way of amended and supplemental answer to the original and to the amended and supplemental bill of complaint, state that since the filing of their original answer herein, and also since the filing of their answer to the amended and supplemental bill of complaint herein, to wit, on the 25th day of May, A. D. 1886, the said suit of Samuel Jeans and others, plaintiffs,

against the railway companies, defendants, described in the original bill herein, and alleged in said amended and supplemental bill to be pending in the circuit court of the State of Ohio for the county of Jefferson by appeal taken by said Evan J. Henry from the judgment of the court of common pleas of said Jefferson county, came on to be heard in said circuit court of the State of Ohio for the county of Jefferson upon the motion of the plaintiffs in said suit to dismiss the appeal of the said Evan J. Henry; and the said court, having heard the evidence and arguments of counsel in behalf of the plaintiffs and of the defendant Evan J. Henry, and being fully advised in the premises, did sustain said motion and did order and adjudge that said appeal be, and the same was thereby,
320 dismissed at the costs of the said Evan J. Henry.

A duly certified copy of said order and judgment of said circuit court of the State of Ohio for the county of Jefferson dismissing said appeal is herewith filed, marked "Exhibit F," and made a part hereof as fully as if recited at length and set forth herein.

These defendants therefore aver and insist that the said decree of the court of common pleas of Jefferson county, Ohio, mentioned in the original answer of these respondents, and a copy whereof is therewith filed as "Exhibit D," declaring said lease null and void and restraining and enjoining the said railway companies, is in full force, and is valid and binding upon said defendants.

J. M. ESTEP AND
HARRISON, OLDS AND MARSH,
Solicitors for Samuel Jeans & Others.

STATE OF OHIO, *Harrison County,* } *ss:*

James H. Haverfield, D. L. Hughes, and Patrick Lynch, being duly sworn, do depose and say that they are the trustees of Cadiz township, Harrison county, Ohio, one of the defendants named in the foregoing amended and supplemental answer; that they have read the same and know the contents thereof, and that the several matters and things set forth in said amended and supplemental answer are, according to the best of their knowledge, information, and belief, true in substance and in fact.

JAS. N. HAVERFIELD.
D. L. HUGHES.
PATRICK LYNCH.

321 Subscribed and sworn to before me this 5th day of Aug., A. D. 1886.

[SEAL.]

JAMES MOORE,
Notary Public, Harrison County, Ohio.

STATE OF OHIO, }
Jefferson County. }

Circuit Court.

SAMUEL JEANS *et al.*
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS R'Y CO. *et al.*

Appeal.

This cause came on to be heard on the motion of the plaintiffs to dismiss the appeal of the said Evan J. Henry, and the court, having heard the evidence and arguments of counsel in behalf of the plaintiffs and of the defendant Evan J. Henry, and being fully advised in the premises, do sustain said motion, and said appeal is hereby dismissed at the costs of the said Evan J. Henry; to which judgment and order the said Evan J. Henry excepts, and, the said Evan J. Henry having presented his bill of exceptions in this behalf, the same is allowed, signed, sealed, and made part of the record herein.

THE STATE OF OHIO, }
Jefferson County, } *ss:*

I, Ross White, clerk of the circuit court within and for the said county, hereby certify the foregoing to be truly taken from the journal of said court as the same remains in my office, at Steubenville, Ohio.

322 Witness my signature and the seal of said court this 2nd day of August, 1886.

[SEAL.] ROSS WHITE, *Clerk.*

And afterwards, to wit, on the 18th day of Oct., A. D. 1886, the following depositions on behalf of the defendants were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of M. J. Becker.

UNITED STATES OF AMERICA, }
Southern District of Ohio. }

CHARLES MORAN, Plaintiff, *vs.* THE P., C. & ST. L. R'Y CO., THE C. & M. V. R'y Co., Samuel Jeanes, *et al.*, Defendants.	Case No. 210, Pending in Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

The plaintiff and C. & M. V. R'y Co. will take notice that on Wednesday, the 13th day of October, A. D. 1886, the defendants, Samuel Jeanes *et al.*, above named, will take the depositions of M. J. Becker, John Renner, M. C. Spencer, and Robert Sherrard, witnesses, to be used as evidence on the trial of the above cause, at the office of J. T. Brooks, Esq., corner of Penn and Tenth streets, Pittsburgh, in the

county of Allegheny, the State of Pennsylvania, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

Dated October 5th, 1886.

Service of the above notice is acknowledged, and proof of the official character of the officer before whom the said depositions may be taken is, by agreement, waived; also all exceptions in regard to time.

HARRISON, OLDS & MARSH, AND J. M. ESTEP,
Solicitors for said Defendants.
HOADLY, JOHNSON & COLSTON,
Solicitors for Complainants.

323 Depositions of sundry witnesses, taken before me, W. C. Boyle, a notary public within and for the county of Allegheny, State of Pennsylvania, in a cause pending in the circuit court of the United States for the southern district of Ohio, eastern division, wherein Charles Moran is plaintiff and The Pittsburgh, Cincinnati & St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company, Samuel Jeanes, *et al.* were defendants, pursuant to the annexed notice, at the time and place therein mentioned, to be read as evidence in behalf of the defendants on the trial of the aforesaid cause.

Present: George Hoadly, Jr., on behalf of the plaintiff; J. T. Brooks, on behalf of the Pittsburgh, Cincinnati & St. Louis Railway Company.

M. J. BECKER, of lawful age, being by me first duly sworn as hereinafter certified, deposes as follows:

By Mr. BROOKS:

Question. You may state your age, residence, and occupation.

Answer. I am 58 years old; reside in Allegheny, and am chief engineer of the Pittsburgh, Cincinnati & St. Louis Railway Co.

Q. How long have you been chief engineer of the Pittsburgh, Cincinnati & St. Louis Railway Company?

A. Since 1867.

Q. What knowledge have you had during that period of the location of the Cincinnati and Muskingum Valley railway, the location of its termini, the physical conditions which affect its maintenance, and the influences to which its traffic is subjected by reason of parallel or competing lines of railway?

A. I have been familiar with the condition of the line since its purchase by T. L. Jewett, in 1869, having made frequent inspections and examinations of the line from time to time, so that I am quite familiar with the features mentioned in the question.

As the line existed at the time of the purchase, in 1869, it
324 had its eastern terminus at Zanesville and its western terminus at Morrow. For its connection at Zanesville it had

the Central Ohio Division of the Baltimore and Ohio Railway Company, and for its connection at Morrow it had the Little Miami railroad. Soon after the purchase an extension was built from Zanesville eastwardly to Dresden junction, where it connected with the main line of the Pittsburgh, Cincinnati & St. Louis railway. The terminus at Dresden junction is simply a way station, without any settlement, and the terminus at Morrow is in a village of perhaps 1,500 or 2,000 inhabitants. The town of Morrow is 36 miles northwardly from Cincinnati, and Dresden junction is 138 miles west of Pittsburgh.

The general direction of the line is from northeast to southwest. In its course it crosses a large number of streams, the principal of which are the Muskingum river and the Scioto river, which require large bridge structures. Near its western terminus it follows a tributary of the Little Miami river, which it crosses in a distance of fourteen miles twelve times, so that the item of maintenance of bridge structures alone is unusually large.

The total distance from Dresden junction to Morrow is 148 miles. There are 55 bridges on the line, besides a great additional number of smaller openings for water-ways, and some of the bridges are of great length, the one over the Muskingum river at Zanesville being over six hundred feet in length, and the one over the Scioto river at Circleville about the same length. At the crossing of the larger streams and near the western terminus, where the line follows the course of Todd's Fork of the Miami, the location is unusually expensive and exposed to injury and destruction during times of floods, which increase the cost of maintenance on those parts of the line to an amount very much above the average of the cost of maintenance of railroads in general.

At the time when the road was purchased by Mr. Jewett, in 1869, and up to the time of the lease to the P., C. & St. L. R'y Co., in 1873, there was no other railroad lying either parallel to the C. & M. V. R'y or intersecting it anywhere within its
325 course, so that there was no competition to its local traffic throughout its entire extent. But since that time there have been quite a number of new railroads constructed, which lie either parallel to it or intersect it at its principal business stations. The Cincinnati and Columbus Midland railroad lies parallel to and immediately adjoining the C. & M. V. R'y from Wilmington to Washington, a distance of about twenty-two miles, crossing it about midway between those points at Sabina; at Washington it is crossed by the Springfield, Jackson and Pomeroy railroad and by the Dayton and Southeastern railroad; at Circleville it is crossed by the Scioto Valley railroad; at Lancaster it is crossed by the Columbus, Hocking Valley and Toledo railroad; at Bremen it is intersected by the Ohio Central railroad, which uses its track to new Lexington, a distance of eleven miles; at Junction City it is crossed by the Straightsville Branch of the Baltimore and Ohio railroad, and at a point about five miles west of Zanesville it is crossed by the Columbus and Eastern railroad; at Zanesville it is crossed by the Baltimore and Ohio railroad and intersected by the Bellaire, Zanesville and Cincinnati

railroad. All these lines compete, of course, with the C. & M. V. R'y for its business.

Q. What was the physical condition of the property at or about the time that it was leased to the P., C. & St. L. Co. with reference to a high or low state of maintenance for the movement of trains?

A. At the time of the lease the railroad was in a very inferior state of general maintenance. The track was laid with old iron rail very much worn; the cross-ties were in a very bad condition; the road-bed generally had been neglected, and especially the bridge structures were in a bad and unsafe condition; quite a number of them, which had been originally built of good and permanent character, had been dismantled entirely and cheap pile trestles substituted, which were of such construction as to obstruct the water-way in many places and cause continual overflow and damage to the structures themselves and to the adjacent embankments. The station buildings
326 were of an inferior character, and the shops were in a very dilapidated condition. Soon after the purchase, in 1869, I made a general examination of the physical condition of the line and reported the result to Mr. Jewett, and again in March, 1870, I made a more detailed examination of the condition of the road, and found the condition of the bridges such that in order to make them reasonably safe it would require an immediate outlay in the way of repairs and renewals of something like $60,000.00. I do not now recollect what repairs were made immediately subsequent to this examination, but it is my impression that only slight repairs were made for several years immediately succeeding the examination, and that at the time of the lease the general condition of the line had but little, if any, improved over and above the condition in which I found it in 1870.

Q. Was this property under your charge as chief engineer of the P., C. & St. L. Co. from the time of the lease to January 1st, 1886?

A. The engineering department of the road was placed in my special charge only as far as new construction work was concerned, and over the maintenance of way I exercised merely a general supervision. The line from Dresden to Zanesville, however, was located by me and the construction commenced, but it was subsequently transferred to the charge of Mr. C. C. Waite, who finished it some time during 1871 or 1872.

Q. Please state what additions or improvements have been made to the Muskingum Valley railway since the lease, distinguishing the same from ordinary items of maintenance. State fully as you can the nature and extent of these additions and improvements and the cost thereof.

A. The permanent improvements made on the line since 1873 consisted in new side tracks, in the extension of old side tracks, in the building of new freight and passenger stations, and especially in the erection of permanent bridges in place of mere temporary structures; in the building of solid embankments in place of temporary trestles, and in the substitution of steel rail for old
327 worn-out iron rail. The total value of these permanent improvements I would estimate at about $136,000.00. This does

not embrace some items of purchase of real estate and settlements for right of way, which were charged direct to constructing and equipment in the earlier days of the lease, and which purchases consisted of properties at Dresden junction and in the vicinity of Dresden, amounting in all to something like $6,000.

Q. What was the physical condition of this railway about January 1st, 1886, as compared with its condition when the lease took effect, about January 1st, 1873?

A. The general physical condition of the line is very materialy improved over that which existed at the time of the lease.

Q. How long have you had practical experience in the construction and maintenance of railway property?

A. I have been in the service of railway companies as engineer for perhaps forty years.

Q. From your knowledge of the maintenance of railway property generally what do you say as to cost or expense of maintenance of the C. & M. V. railway in comparison with other railway properties by reason of its peculiar location and physical surroundings?

(Objected to.)

A. I should consider the necessary cost of maintenance of that line over and above the general average of railroads in the State, taking into account the nature and extent of its traffic. Of course, it is not expected that a line like the C. & M. V. railway would be maintained at such a high standard as a main trunk line, but comparing it with a line of similar importance I still think that the amount necessary to maintain it in a condition suitable to its traffic is over and above the average of other roads.

(Answer objected to.)

Cross-examination by Mr. HOADLY:

Q. How far is Morrow from Columbus by the Little Miami railroad?

A. 84 miles.

328 Q. How far is Dresden junction from Columbus by way of the main line of the P., C. & St. L. R'y?

A. 55 miles.

Q. Making a total distance from Dresden to Morrow by way of Columbus how much?

A. 139 miles.

Q. What is the total number of openings for water-ways on the C. & M. V. railway?

A. Well, I could not give the total number. Some of them are very small. Aside from the more important structures, the number of which I have given, I could not very well enumerate the number of openings.

Q. At what dimensions do you draw the line between the more important structures and the minor water-ways?

A. In the number I have given there is nothing included of a less span than forty-five feet.

Q. What was the general character of these structures, as a rule, on the 1st of January, 1886?

A. The general character of the bridges on the first of January, 1886, was very fair, so much so that it was not considered necessary to resort to any renewals during the year 1886. During the year 1885 several iron bridges had been built on the road to replace wooden ones, and for several years prior to that time iron bridges had been substituted for wooden structures on different parts of the line.

Q. Can you tell about what dates the various intersecting and paralleling railroads which you have referred to were built?

A. I cannot give the exact dates, but, as nearly as I can recollect, the Columbus and Cincinnati Midland railroad was finished in 1885, the Springfield, Jackson and Pomeroy railroad in 1877, and the Dayton and Southeastern railroad about the same time. The Scioto Valley was built perhaps in 1874 or '5. The Hocking Valley, if I recollect right, was the first one intersecting, and I think it was built in 1873. The main line of the Baltimore & Ohio R. R. at Zanesville, I think, was established before the C. & M. V. railway
329 was built. The Straightsville Branch of the B. & O. R. R. was built about 1875, the Ohio Central about 1876, and the Columbus and Eastern has only been finished a few months ago. The Bellaire, Zanesville and Cincinnati railroad was finished as far as Zanesville about two years ago. I forgot to mention another road which is just now ready to be opened, and which is known as the Black Diamond road, and connects with the C. & M. V. railway at Putnam, near Zanesville.

Q. Did you make any general examination of the condition of the road between March, 1870, at which time you made an examination, and the time of the lease?

A. I do not recollect having made any special examination, but I think that I have gone over the road during that period of time, as I have done subsequent to the lease, periodically, although I have no data by which I could refresh my memory sufficiently on that point.

Q. How many miles of side track were on the line at the time the lease was made? Can you refer to anything that will enable you state?

A. There was no record giving the exact number of miles of side track at that time, and the only information that I could ever find on this subject was the report for taxation.

Q. How many miles of side tracks were added during the lease?

A. About 6½ miles.

Q. What do you estimate the cost per mile of this additional side track to be?

A. We generally estimate the cost of side track, counting only the track superstructure, at the rate of one dollar per foot, which would be $5,280 per mile; but this does not include the preparation of the road-bed, which varies according to location and circumstances.

Q. Among the items of betterments you have spoken of the erec-

tion of permanent bridges in place of temporary structures. Have you reference to the replacing of the wooden bridges by iron that you have spoken of as having taken place in 1885?

330 A. Yes, sir; we have taken into account the difference in cost between the new iron bridge and the cost of the bridge of the character of the old one, calling the difference between the two the value of the improvement.

Q. In estimating the relative expense of maintenance of the C. & M. V. railway as compared with other railroads what class of railroads have you taken as the basis of comparison—the other railroads in the State of Ohio?

A. No, sir; I think I stated in my answer that I made the comparison with other railroads of a similar character, not comparing it with other trunk lines which are kept up at a much higher standard of perfection.

Q. I understood you to take as the basis of comparison the average of the roads that you were acquainted with of like character of business.

A. Yes, sir; because I had to determine upon my own range of experience.

Q. But I want to know whether you were limiting yourself to your own range of experience and talking of the roads with which you were acquainted.

A. I have a pretty fair knowledge of the roads in the States of Ohio, Indiana, and Illinois, and, judging from the amount of traffic and the general necessity of maintaining roads at a standard to be justified by the traffic, I have made my comparison upon that basis.

Q. Are not these States which you have mentioned, Ohio, Indiana, and Illinois, rather favorable than otherwise for the building and maintenance of railroads.

A. Yes, sir; they are, perhaps, generally speaking. Conditions for constructing railroads in the State of Ohio, I think, would be a fair average of those throughout the country. As you go farther west the construction becomes easier, and as you go farther east it becomes more expensive, and I think the southern half of the State of Ohio would present a very fair general average of the cost of maintenance of railroads.

Q. Were you acquainted with the general state of the property of the C. & M. V. Railway Company at the time the lease was made?

331 A. I made these two examinations of the road in 1869 and 1870, which gave me a very clear general knowledge of the condition of the road, and since that time and up to the time of the lease, in 1873, I certainly made several additional trips over the line with a view of acquainting myself and examining the condition of the road. I had also been over the line on several occasions prior to that, during the administration of Mr. Guest, who asked me to make some examinations of some special features along the line, so that altogether I had a very fair general knowledge of its condition at the time of the lease.

M. J. BECKER.

JOHN W. RENNER, of lawful age, being first by me duly sworn as hereinafter certified, deposes as follows:

By Mr. BROOKS:

Q. You may state your age, residence, and occupation.

A. Age, 42; residence, Pittsburgh; occupation, assistant comptroller of the P., C. & St. L. R'y Co.

Q. How long have you occupied that position?

A. Since January, 1883.

Q. What, if any, official connection had you with that company prior to that time?

A. I was auditor of the P., C. & St. L. company prior to January, 1883.

Q. How long?

A. From January 1st, 1875.

332 Q. What, if any, position have you ever held in the service of the C. & M. V. R'y Co.?

A. I have been auditor of the C. & M. V. R'y Co. since January 1st, 1886.

Q. Had you any official relation with that company before that time?

A. Only as assistant comptroller and auditor of the lessee, the P., C. & St. L. Company.

Q. You may state in general what were and are your duties as auditor and assistant comptroller of the P., C. & St. L. R'y Co.

A. As assistant comptroller of the P., C. & St. L. Company I have charge, under the comptroller, of all accounts of that company.

Q. Who is the head of that department?

A. Thomas D. Messler, comptroller.

Q. And he is the same person who is president of the C. & M. V. R'y Co?

A. He is.

Q. What are your duties as auditor of the C. & M. V. R'y Company?

A. I audit the accounts of the C. & M. V. R'y Co. and perform the usual duties of an auditor.

Q. Have you knowledge of Mr. Messler, president of C. & M. V. Co., having received a telegram from Mr, Charles Moran or Moran Bros., about the 1st of July, 1885?

Exhibit A.

A. I have.

Q. Will you please produce it, mark it "Exhibit A," and attach it to your deposition?

A. Yes, sir.

Q. I will further ask you what knowledge you have of Mr. Messler having replied to the message referred to?

Exhibit B.

A. I know that a reply was sent and can produce a copy.

Mr. BROOKS: Please mark that "Exhibit B" and attach it to your deposition.

By Mr. BROOKS:

Q. What is the fact as to the P., C. & St. L. Co., lessee of the
333 C. & M. V. R'y having expended, under the lease of the C. & M. V. R'y to the P., C. & St. L. R'y Co., a certain amount of money for additions and improvements to the C. & M. V. R'y, and if such expenditures have been made what is the amount thereof, about?

A. I have knowledge that such expenditures were made during the time the lessee had charge of the road, and have a statement of the same, which amounts to $140,969.69, after crediting the account with the sum of $1,650 for lands sold.

Q. What proportion of said account, if any, has C. & M. V. Co. ever paid to the P., C. & St. L. Co.?

(Question objected to.)

A. Paid nothing.

Q. How much does the C. & M. V. Co. owe the P., C. & St. L. Co. to-day on account of those additions and improvements?

A. $140,969.69, without interest.

Q. Why has that bill of the lessee company against the lessor company not been paid?

A. Well, on account of the utter insolvent condition of the C. & M. V. Co.

Q. From your knowledge of the assets and liabilities of the lessor (the C. & M. V. Co.), what do you say as to its solvency or insolvency?

A. I would say that the company is insolvent.

Q. State, if you can, what has been the gross earnings, expenses, and the net earnings of that property since the year 1866 to January 1st, 1886, or as much of that period as you are able to state.

A. I submit a statement as my answer to your ques-
Exhibit C. tion, marked "Exhibit C," and attach the same to my deposition.

Cross-examination by Mr. HOADLY:

Q. I understand you to say you have charge, under Mr. Messler as comptroller, of all the accounts of the P., C. & St. L. Co.?

A. I have.

334 Q. Have you any data which will enable you to tell me in what manner charges for through business done between the C. & M. V. R'y and the P., C. & St. L. R'y were divided during the period while it was operated under the lease?

A. In the greater number of instances the C. & M. V. Co. was allowed an arbitrary distance in apportioning the revenue.

Q. Was that the case at both ends of the line on business interchanged at Morrow and on business interchanged at Dresden junction?

A. I think it was. The preponderance of the business is eastward, but I think we allowed an arbitrary to the west end as well as the east end.

Q. On what principle was the arbitrary allowed?

A. Under a general rule that the road having the shortest line should be allowed something above a strict prorate for doing the business.

Q. You mean by the term "having the shortest line" the shortest line between the connecting roads?

A. Yes, sir; between the two connecting roads.

Q. Does this apply both to passenger and freight business?

A. I think it applies only to the freight business, for the reason that there is no expense in loading or unloading a passenger—he handles himself.

Q. Then do I understand that the passenger rates were prorated strictly with that line?

A. Yes.

Q. During the operation of the C. & M. V. R'y, under the lease to the P., C. & St. L. R'y Co., was any through business between points east of Dresden and points west and south of Morrow ever done over the C. & M. V. R'y, or do you know? Was it the practice to do any?

A. I cannot state from memory. I can say that it was not the practice to send through business from the east to the west over the C. & M. V. R'y, but as to how much through business was diverted to the C. & M. V. R'y I am unable to say from memory.

335 Q. During the operation of the C. & M. V. R'y by the P., C. & St. L. R'y Co., under the lease, has it been the practice of the P., C. & St. L. Co. to run through sleeping car from Pittsburgh to Cincinnati or Louisville, or do you know?

A. I do not know.

Q. Do you know whether it has been the practice of the P., C. & St. L. Co. to carry through passengers between points east of Dresden to points west of Morrow, over the C. & M. V. R'y, either partially or wholly?

A. I cannot state from memory.

Q. You have stated that the total expenditures for additions and improvements on the C. & M. V. R'y made by the P., C. & St. L. Co. are $140,969.69, after crediting the same with a sum amounting to about $1,600 for land sold. Can you furnish an itemized statement of that?

A. I can and I herewith submit such statement, marked "Exhibit D," and make the same a part of my deposition. Exhibit D.

Q. From what data was this itemized statement made up?

A. From the records of the P., C. & St. L. Co.

Q. From the books of that company?

A. A part of the statement was prepared by the superintendent of the C. & M. V. R'y from his records, supervised by the chief engineer and sent to the accounting department. The balance of it is book record.

Mr. HOADLY: I object to Mr. Renner's testimony in reference to

the amounts expended for additions and improvements, and shall move to strike it out on the ground that it is not the best evidence.

By Mr. HOADLY:

Q. When the C. & M. V. R'y Co. was allowed an arbitrary on business interchanged at Dresden junction and at Morrow, was the arbitrary based upon or did it bear any relation to the full legal rate between the points at which the goods were received or to which they were consigned on the C. & M. V. R'y and the point of junction—or can you tell?

A. I may say that I cannot tell.

336 Redirect examination by Mr. BROOKS:

Q. You have stated in your cross-examination that an arbitrary was allowed to the C. & M. V. R'y in respect to through freight passing over that line. Does that mean that the C. & M. V. R'y was allowed more or less than the regular mileage rate for transportation?

A. More.

Q. At the time of the lease of the C. & M. V. R'y to the P., C. & St. L. Co. what was the total capital stock of the Pennsylvania Company?

A. $8,500,000.

Q. What amount of that stock was at that time held by the Pennsylvania Railroad Company?

A. $8,000,000.

Q. At the same date what was the total capital stock of the P., C. & St. L. R'y Co.?

A. $8,433,550.

Q. How much of that was at that time owned by the Pennsylvania Railroad Company and how much by the Pennsylvania Company?

A. Owned by the Pennsylvania Railroad Company, $3,000,450; by the Pennsylvania Company, $3,778,800.

Q. At the same date what was the total capital stock of the C. & M. V. Co.?

A. $3,996,610.

Q. What proportion of that was owned by the Pennsylvania Company?

A. $2,425,000.

Q. What was the amount of the indebtedness of the C. & M. V. R'y Co. to the P., C. & St. L. R'y Co. on the 1st day of January, 1886, growing out of advances made by the last-named company for interest on bonds of the former company; also for additions and improvements made to the C. & M. V. R'y and for expense of maintenance and operation in excess of income from the leased property?

A. $1,081,013.37.

337 Recross-examination by Mr. HOADLY:

Q. That I understand, Mr. Renner, to be the balance of indebted-

ness of the C. & M. V. Co. to the P., C. & St. L. Co., as shown by the books of the P., C. & St. L. Co.?

A. The net balance.

Q. As shown by the books and records of the company?

A. Yes, sir.

Q. Does that include interest charged on the balances?

A. No, sir.

Q. That can be found from the itemized statement that you attached to your deposition by simply adding up the deficiencies?

A. It can be found by adding to the total shown by the itemized statement marked "Exhibit C" the sum of $4,303.35, being the difference between the amount paid for right of way purchases on account of the C. & M. V. R'y Co. and the amount received for the land sold on account of that company, as shown by "Exhibit B."

JOHN W. RENNER.

ROBERT SHERRARD, Jr., of lawful age, being by me first duly sworn as hereinafter certified, deposes and says as follows:

By Mr. BROOKS:

Q. You may state your age, residence, and occupation.

A. My age is 62; my residence, Steubenville, Ohio; and I am engaged in the banking business in that place.

338 Q. Are you a stockholder of the Pittsburgh, Cincinnati & St. Louis Railway Company; and, if so, how long have you been a stockholder?

A. I have been a stockholder of the Pittsburgh, Cincinnati & St. Louis Railway Company, and its predecessor, the Steubenville & Indiana Railroad Company, since 1851.

Q. Are you the Mr. Sherrard spoken of in Mr. Estep's deposition as one of the parties who procured the institution of the suit of Samuel Jeanes against the Pittsburgh, Cincinnati & St. Louis Railway Company?

A. I have not read through the testimony, but I presume I am.

Q. I will ask you if you were one of the parties who employed Mr. Estep to bring a suit against the Pittsburgh, Cincinnati & St. Louis Railway Company and the Cincinnati & Muskingum Valley Railway Company to cancel the lease of the latter company to the former.

A. I am the person named.

Q. What knowledge had you, if any, at the time this lease was made that at that time the Pennsylvania Railroad Company or the Pennsylvania Company owned a majority of the bonds of the C. & M. V. R'y Co.?

A. I did not know it at that time.

Q. When did you first learn that such was the case?

A. Not until 1885.

Q. What knowledge, if any, have you of any champertous contract between either the Pennsylvania Railroad Company, the Pennsylvania Company, or the Pittsburgh, Cincinnati & St. Louis Railway Company, on the one hand, and Mr. Samuel Jeanes or any other person or company or municipality in respect to the suit which was

brought in the Jefferson county common pleas court for the purpose of cancelling the lease of the Cincinnati & Muskingum Valley Railway Company to the Pittsburgh, Cincinnati & St. Louis Railway Company?

A. I know of no such agreement. No such arrangement was made with my knowledge or to my knowledge.

339 Q. What, if anything, was ever said to you by any officer of either of the companies named to induce you to take part in beginning the suit?

A. There was never any arrangement nor did I have any conversation with any member of either company on the subject before or since.

Cross-examination by Mr. HOADLY:

Q. I believe you are a director in the Pittsburgh, Cincinnati & St. Louis Railway Company?

A. I am.

Q. How long have you been a director of that company?

A. Since the organization, in 1868.

Q. At the time of the lease to the Pittsburgh, Cincinnati & St. Louis Railway Company of the Cincinnati & Muskingum Valley railway were you aware that the Pennsylvania Company or the Pennsylvania Railroad Company held a majority of the stock of the P., C. & St. L. R'y Co.?

A. I understand that they held a majority of the stock.

Q. At the time of the lease of the C. & M. V. R'y were you aware that the Pennsylvania Railroad Company or the Pennsylvania Company held a majority of the stock of the C. & M. V. Co.?

A. I did so understand it.

Q. You have lived a great many years in Steubenville, have you not?

A. Yes, sir.

Q. You have been engaged in business there?

A. Yes, sir.

Q. And been very well known in the town?

A. Yes, sir.

Q. How far is your place of business in Steubenville from the offices of the city government?

A. I suppose 200 feet.

Q. It has been pretty well known that you were a director of the P., C. & St. L. R'y Co., has it not?

A. I think so.

340 Q. Have you ever been a member of the city council or otherwise a member of the city government of Steubenville?

A. I was city solicitor; but I never was in any other position.

Q. I presume that was some time before the lease was made?

A. Yes, sir; it was.

ROB'T SHERRARD, JR.

M. C. SPENCER, of lawful age, being by me first duly sworn as hereinafter certified, deposes as follows:

By Mr. BROOKS:

Q. What is your age, residence, and occupation?

A. My age is 52; my residence, Sewickley, Pa., and my occupation, assistant treasurer of the P. C. & St. L. R'y Co.

Q. How long have you been assistant treasurer of the P., C. & St. L. R'y Co.?

A. I was treasurer from 1871 until January 1, 1883, and have been assistant treasurer ever since.

Q. Who made the remittances for interest due on the bonds of the C. & M. V. R'y Co. during that period?

A. I did.

Q. I will ask you where the original vouchers are for which these remittances were made.

A. I have the original vouchers now and produce them here.

(It is agreed between counsel that copies of the original
341 vouchers which have been produced may be certified to by M. C. Spencer, assistant treasurer, and made a part of his deposition, with the understanding that if desired by counsel for Charles Moran the originals shall be produced in court at any time.)

The witness, in pursuance of the above agree-
Exhibits 1 to 41. ment, submits copies of vouchers which he has received for payment of interest, marks them, consecutively, from number one to number forty-one, inclusive, and attaches them to this his deposition.

Cross-examination by Mr. HOADLY:

Q. These are correct copies of the originals, Mr. Spencer?

A. Yes, sir.

Q. These vouchers drawn in favor of C. C. Waite, as treasurer of the C. & M. V. Co., are in two items. There are two sets of vouchers for each amount of semi-annual interest. Why was that done? The whole amount was remitted to Mr. Waite, was it not?

A. It was always remitted to Mr. Waite, treasurer. There was a certain amount of bonds held by the Pennsylvania Railroad Company and the balance held by outside parties. The Pennsylvania Railroad Company would not, perhaps, present their coupons for awhile, and we sent them to Mr. Waite to save the trouble of sending the whole amount to New York; that is the only reason.

By Mr. BROOKS:

Q. How many original vouchers and copies of the same do you produce and make a part of your deposition?

A. Forty-one.

M. C. SPENCER.

342 STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

I, W. C. Boyle, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named M. J. Becker, John W. Renner, M. C. Spencer, and Robert Sherrard were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by myself in the presence of the witnesses respectively, and were subscribed by said witnesses in my presence, and were taken at the time and place in the annexed notice specified.

I do further certify that I am not a relative or attorney of either party or otherwise interested in the event of this action.

I also certify that all of said witnesses reside more than one hundred miles from the city of Columbus, State of Ohio.

In witness whereof I have hereto set my hand and seal of office this 13th day of October, A. D. 1886.

[NOTARIAL SEAL.] W. C. BOYLE,
Notary Public.

343 EXHIBIT "A." J. W. R. Deposition.

Copy of Telegram.

Received at 10.17. 7, 1, 1885.
Dated New York.

To Thos. D. Messler, vice-pres't, Pittsburgh:

No remittance received from Muskingum Valley; telegraphed yesterday afternoon; no reply received.

MORAN BROTHERS.

EXHIBIT "B." Deposition of J. W. R.

Copy of Telegram.

JULY 1, 1885.

Moran Bros., 68 William St., New York:

The P., C. & St. L. Co. has been restrained by temporary injunction, granted on Monday in the suit of Samuel Jeanes and others against P., C. & St. L. and C. & M. V. Companies, from advancing the money for the interest referred to. This suit is brought in Jefferson county common pleas court, Ohio, and a hearing upon the question of continuing or not the temporary injunction is to be heard within thirty days.

THOS. D. MESSLER.

EXHIBIT "C." J. W. R.

Statement Showing the Gross Earnings, Expenses, and Net Earnings of the Cincinnati and Zanesville Railroad Company from July 1, 1866, *to June* 30, 1869.

	Gross earnings.	Expenses.	Net earnings.
July 1, 1866, to June 30, 1867	$349,632 57	$326,462 51	$23,170 06
Year ending June 30, 1868	355,953 89	338,277 96	17,675 93
Year ending June 30, 1869	346,181 03	299,796 31	46,384 72
	$1,051,767 49	$964,536 78	$87,230 71

Unable to ascertain any information in regard to results of operating this road for the period from July 1, 1869, to August 31, 1870.

344 *Statement Showing the Gross Earnings, Expenses, and Net Earnings of the Cincinnati and Muskingum Valley Railway Company from September* 1, 1870, *to June* 30, 1873.

	Gross earnings.	Expenses.	Net earnings.
10 mos. ending June 30, 1871	$325,237 64	$285,183 67	$40,053 97
Year ending June 30, 1872	458,572 56	322,857 63	135,714 93
Year ending June 30, 1873	478,155 38	410,310 19	67,845 19
	$1,261,965 58	$1,018,351 49	$243,614 09

Statement Showing the Gross Earnings, Expenses, Net Earnings, Interest on Bonds, and Loss in Operating the Cincinnati and Muskingum Valley Rai way from January 1, 1873, *to December* 31, 1885.

	Gross earnings.	Expenses.	Net earnings.	Inter't on bonds.	Net loss.
May 1 to Dec. 31, '73	$143,216 68	$430,410 68	$12,806 00	$105,000 00	$92,194 00
Year 1874	429,828 74	433,128 85	Loss 3,600 11	105,000 00	108,600 11
" 1875	396,227 23	360,482 60	35,744 63	105,000 00	69,255 37
" 1876	322,359 10	329,743 43	Loss 7,384 33	105,000 00	112,384 33
" 1877	366,773 86	340,887 91	25,885 95	105,000 00	79,114 05
" 1878	340,396 72	318,086 70	22,310 02	105,000 00	82,689 98
" 1879	374,666 12	264,523 95	110,142 17	105,000 00	Profit 5,142 17
" 1880	364,703 54	319,881 67	44,821 87	105,000 00	60,178 13
" 1881	395,321 39	375,045 88	20,275 51	105,000 00	84,724 49
" 1882	386,740 39	299,876 08	86,864 31	105,000 00	18,135 69
" 1883	384,050 87	383,484 71	566 16	105,000 00	104,433 84
" 1884	383,667 08	425,669 32	L's 42,002 24	105,000 00	147,002 24
" 1885	319,645 08	386,562 39	" 66,917 31	52,500 00	119,417 31
	$4,907,596 80	$4,668,084 17	$239,512 63	$1,212,500 00	$1,072,987 37
Less amount due C. & M. V. R'y Co. for quarry rent from July 1, 1873, to July 1, 1874					90 05
					$1,072,897 32
Net loss as per above statement					$1,072,897 32
Add net earnings received by the C. & M. V. R'y Co. in the interim between date of lease, Jan. 1, 1873, and date of actual delivery of road, May 1, 1873					3,812 72
					$1,076,710 04

Pittsburgh, Oct. 13, 1886.

345 EXHIBIT "D." J. W. R.

Betterments Since 1873.

Statement of location and length of side tracks at date of lease, the distance each has been extended since that date, together with new or additional sidings built since January, 1873.

Location.	Length.				Cost.
	At time of lease.	Year laid.	New track.	Extended.	
Dresden junction:					
East "Y"		1873	525		$525 00
Transfer		?	796		796 00
Gilbert:					
Side track		1878	675		675 00
Mathews' mine	661	1874		212	250 73
		1881		75	75 00
Perry's coal track		1884	950		602 30
Horton's coal track		1881	71		71 00
Zanesville:					
Cross-over, Ohio Iron Co.		?	104		104 00
River siding		?	341		341 00
Cross-over, Fifth street		?	93		93 00
Scale track		1883	566		513 71
Straight line	754	1874		100	100 00
Back track	357	1882		139	139 00
Old warehouse	180	1873		180	195 39
		1882		169	169 00
Passenger track		1882	520		520 00
Glass-house		1878	63		50 40
Miller's stone siding		1882	388		296 42
Newton's		1874	545		545 00
M. V. mine tracks	261	1873		539	609 62
Lower mine tracks		1874	1,774		922 15
		1875	747		315 00
		1884	315		125 00
			160		
Diamond mine track	626	1882		604	673 05
Beech Grove		1883	3,588		6,373 27
Carried over	2,839		12,221	2,018	$15,080 04
346 Amount forward	2,839		12,221	2,018	$15,080 04
Block coal track		1883	367		770 70
Junction City:					
South side track	1,231	1874		433	511 00
North side track		1882	2,330		1,937 79
Transfer track	172	1874		318	404 00
Bremen	1,163	1874		312	330 00
Bremen spur track		?	361		361 00
East of Lancaster:					
Stone quarry siding		1883	2,404		1,709 22

Betterments Since 1873—Continued.

Location.	Length.				Cost.
	At time of lease.	Year laid.	New track.	Extended.	
Lancaster:					
Bent works track		1881	153		171 90
Hocking Valley transfer			333		333 00
Del-Mount siding	303	1874		1,460	1,460 00
Amanda siding	679	1873		600	600 00
Amanda:					
Balthaser track		1883	133		206 01
Stoutsville side track	380	?		627	627 00
Circleville:					
Transfer track		1877	190		190 00
Whiskey switch	641	?		200	200 00
Williamsport:					
Side track	522	1878		862	1,091 98
Clay siding		1883	373		329 12
Atlanta side track	763	1878 1880		698	698 00
New Holland side track	438	1877		912	912 00
Kingfred side track		?	1,450		1,450 00
Washington:					
Stock track	876	1873		558	603 13
Draper's track		1878	90		106 20
Carried over	10,007		20,405	8,999	$30,082 09
347 Brought forward	10,007		20,405	8,999	$30,082 09
Coal track	1,149	1878		210	253 50
O. S. transfer		1880	261		261 00
McCoy's track		1881	239		204 90
Stuckey's track		1882	269		172 30
Ely & Stimson's track		1878	463		341 30
Talbot's track		1878	403		451 00
Midland transfer		1884	130		148 58
Jasper side track		1878	33		33 00
Selden side track		1874	1,095		1,095 00
Sabina:					
Ely's track		1876	47		26 20
Ruseville side track	821	1878		597	597 00
Richland side track		1884	291		181 35
Wilmington:					
Cross-over		1883	167		233 87
Side track	1,055	1879		108	108 00
Pork-house track		?	232		232 00
Morrow:					
Main track	1,103	1884		90	53 96
Cross-over		1879	177		286 23
Totals	14,135		24,212	10,004	$34,761 28

348 *Betterments Since* 1873—Continued.

Stations, shops, buildings, and grounds.

Location.	Original condition.	Present condition.	Total cost of improvements.	Amount chargeable to betterments.
Dresden junction	Small building.	Comfortable frame building.	$3,758 02	$1,866 76
Dresden junction	None	Stone ash pit	176 14	176 14
Zanesville	None	Brick passenger station, land, sewers, etc.	17,319 52	17,319 52
Putnam	None	Stone ash pit	150 00	150 00
Roseville	Old warehouse.	New frame station	1,170 03	1,000 00
New Lexington	None	New passenger and freight station.	2,077 49	2,077 49
Junction City	None	New passenger and freight station.	803 99	803 99
Lancaster	None	Stone ash pit	170 50	170 50
Circleville	None	Brick passenger station and platforms.	6,023 03	6,023 03
Circleville	Old frame	Brick freight station and platforms.	2,000 00	1,200 00
Jasper	None	New passenger station	736 95	736 95
Morrow	None	Ash pit (stone)	175 00	175 00
		Totals	$34,560 67	$31,699 38

349 *Betterments Since* 1873—Continued.

"Permanent way," etc.

Location or name.	Original condition.	Present condition.	Total cost of improvements.	Amount chargeable to betterments.
Waukatomika trestle	Trestle, 32 feet high	Earth filling and 12 feet trestle.	$2,190 70	$2,190 70
Bridge 45½	Trestle	2 spans iron bridge, pier, abut., masonry, and excavation creek channel.	16,438 62	16,438 62
Gilberts	689 feet trestle	599 feet embankment and 90 feet trestle.	2,800 00	2,800 00
Trestle between bridge 44¼ and Main St., Zanesville.	Trestle	Embankment	300 00	300 00
Arch bridge, between bridges 44 and 44½.	69 feet truss	Stone arch and iron stringers.	2,400 00	1,430 00
Cemetery crossing	64 feet trestle	Ashlar masonry, iron stringers.	3,400 00	3,400 00
Shawnee Run	140 feet trestle	3 stone arches	5,490	5,490 00
Bridge 43	Howe truss	Iron bridge	6,868 19	2,218 19
Bridge 40	Howe truss	Covered Howe truss	1,053 89	1,053 89
Bridge 36	Howe truss	Covered Howe truss	2,689 20	2,689 20
Bridge 38	Howe truss	Covered Howe truss	963 50	963 50
Bridge 26	Trestle	3-span Howe truss	3,648 00	2,688 00
Bridge 25½	Trestle	Masonry pier and 2 spans Howe truss.	1,913 08	1,400 00
Bridge 25	Howe truss	Iron bridge	1,344 30	192 00
Medill's overhead bridge, east of Lancaster.	Temporary or grade crossing.	Masonry abutments and earth filling.	1,301 62	1,301 62
Mithoff's overhead bridge, W. of Lancaster.	Temporary or grade crossing.	Masonry abutments and earth filling.	1,524 20	1,524 20
Bridge 23	Combination wood and iron.	Iron bridge	3,384 75	1,098 30
Bridge 22	Howe truss	Iron bridge	2,835 00	613 00
Bridge 19	Howe truss	Covered Howe truss	713 96	713 96
Bridge 17¾	Trestle	Masonry pier and iron deck bridge.	4,079 33	3,479 33
Bridge 14	Howe truss	Covered Howe truss	287 33	287 33
Bridge 11	Howe truss	Iron bridge	3,263 50	1,839 00
Bridge 10	Howe truss	Covered Howe truss	860 47	860 47
Bridge 1	Howe truss	Covered Howe truss	1,906 03	1,906 03
East of Morrow	Trestle	Stone culvert and embankment.	1,283 97	1,081 97
755 feet of various additional trestles filled and made solid embankment			1,845 00	1,845 00
Total "permanent way," etc.			$74,784 64	$59,804 31

350 *Betterments Since* 1873—Continued.

Track.

Location.	Original condition.	Present condition.	Date.	Total cost of improvement.	Amount chargeable to betterments.	Remarks.
Main track	Chair iron	Steel rail	1880	$763 02	$321 30	
" "	" "	" "	1881	867 32	265 23	
" "	" "	" "	1882	29,915 76	5,277 84	
" "	" "	" "	1883	64,495 71	2,932 00	
" "	" "	" "	1884	36,994 75	1,605 00	
Total track				$133,036 56	$10,401 37	

Summary.	Total cost of improvements.	Amount chargeable to betterments.
Sidings and additional tracks	$34,761 28	$34,761 28
Stations, shops, buildings, and grounds	34,560 67	31,699 38
Permanent way, etc.	74,784 64	59,804 31
Track (steel *vs.* iron)	133,036 56	10,401 37
	$277,143 15	$136,666 34
Amount brought forward		$136,666 34
Add for right of way, depot grounds, etc., bought from G. W. Adams at Dresden and Dresden junct., O., in 1874	$5,003 35	
For right of way at Dresden, O., bought of Henry Farrell *et al.* in 1875	950 00	
		5,953 35
		$142,619 69
Less for amounts received from the sale of real estate as follows:		
For strip of ground at crossing at Washington, C. H., sold to D. & H. E. R'y Co. in August, 1876	$500 00	
For sale of Morrow lot, near Morrow, O., in July, 1881	150 00	
For ground in Circleville, O., sold for use of extension of Clinton St. through gravel pit	1,000 00	
Total credits		1,650 00
Total amount due P., C. & St. L. R'y Co. for betterments to C. & M. V. R'y to December 31, 1885		$140,969 69

Pittsburgh, Pa., October 13, 1886.

351 EXHIBIT "No. 1." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

Moran Bros., New York:

July 1, 1873. For semi-annual interest, at 7 per cent., due this day, on $1,500,000 first-mortgage bonds C. & M. V. R'y Co. $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) JNO. E. DAVIDSON, *Auditor.*

Approved for payment.

THOS. D. MESSLER, *Comptroller.*

Received, 30th of June, 1873, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand and five hundred dollars in full for the above account.

$52,500.00.

(Signed) MORAN BROTHERS.

EXHIBIT "No. 2." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

Moran Bros., New York:

Jan'y 1, 1874. For semi-annual interest, due this day, at 7 per cent. per annum, on $1,500,000 first-mortgage bonds of C. and M. V. R'y Co. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) JNO. E. DAVIDSON, *Auditor.*

Approved for payment.

THOS. D. MESSLER, *Comptroller.*

Received, 2d January, 1874, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand five hundred dollars in full for the above account.

$52,500.00.

(Signed) MORAN BROTHERS.

EXHIBIT "No. 3." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti and Muskingum Val. R'y Co., Dr.

Moran Bros., New York:

July 1, 1874. For semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of C. and M. V. R'y Co., at 7 per cent. per annum—$1,500,000 at 3½ per cent. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been exam-
352 ined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) JNO. E. DAVIDSON, *Auditor.*

Approved for payment.

THOS. D. MESSLER, *Comptroller.*

Received, July 1, 1874, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand and five hundred dollars in full for the above account.

$52,500.00.

(Signed) MORAN BROTHERS.

EXHIBIT "No. 4." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti & Muskingum Valley R'y Co., Dr.

Moran Bros., New York:

Jan'y 1, 1875. For semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of C. & M. V. R'y Co., at 7 per cent. per annum—$1,500,000 at 3½ per cent. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) JNO. E. DAVIDSON, *Auditor.*

Approved for payment.

THOS. D. MESSLER, *Comptroller.*

Received, 31st December, 1874, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand five hundred dollars in full for the above account.

$52,500.00.

(Signed) MORAN BROTHERS.

EXHIBIT "No. 5." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti & Muskingum V. R'y Co., Dr.

Moran Bros., New York, N. Y.:

July 1, 1875. For semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of Cincinnati and Muskingum Valley R'y Co., at 7 per cent. per annum—$1,500,000 at 3½ per cent. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER,
Acting Auditor.

Approved for payment.

THOS. D. MESSLER, *Comptroller.*

Received, 30th June, 1875, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand five hundred dollars in full for the above account.

$52,500.00.

(Signed) MORAN BROTHERS.

353 EXHIBIT "No. 6." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti & Muskingum Valley R'y Co., Dr.

Moran Bros., New York:

Jan'y 1, 1876. For semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of C. & M. V. R'y Co., at 7 per cent. per annum—$1,500,000 at 3½ per cent. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.
(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
THOS. D. MESSLER, *Comptroller.*

Received, December 30th, 1875, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand and five hundred dollars in full for the above account.
$52,500.00.
(Signed) MORAN BROTHERS.

EXHIBIT "No. 7." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

Moran Bros., New York, N. Y.:

July 1, 1876. For semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of C. & M. V. R'y Co., at 7 per cent. per annum—$1,500,000 at 3½ per cent. ---------- $52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.
(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
THOS. D. MESSLER, *Comptroller.*

Received, New York, 30th June, 1876, of the Pittsburgh, Cincinnati & St. Louis Railroad Company fifty-two thousand five hundred dollars in full for the above account.
$52,500.00.
(Signed) MORAN BROTHERS.

EXHIBIT "No. 8." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti and Muskingum Valley R'y Co., Dr.

Moran Bros., New York:

Jan'y 1, 1877. Semi-annual interest, due this day, on $1,500,000 first-mortgage bonds of C. & M. V. R'y Co., at 7 per cent. per annum—$1,500.000 at 3½ per cent. ---------- $52,500 00

354 I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
THOS. D. MESSLER,
Ass't to Pres't and Comptroller.

Received, December 30, 1876, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand five hundred dollars in full for the above account.
$52,500.00.

(Signed) MORAN BROTHERS.

EXHIBIT "No. 9." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to C. & M. V. R'y Co., Dr.

C. C. Waite, treas'r, Zanesville, O.:

July 1, 1877. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000.00 at 3½ per cent. ---------- $52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York ---------- 26,180 00

$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 1st, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 10." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to C. & M. V. R'y Co., Dr.

C. C. Waite, treas., Zanesville, Ohio.

July 1, 1877. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent.	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

355 Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, June 27, 1877, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) C. C. WAITE, *Treas.*

EXHIBIT "No. 11." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treas., Zanesville, Ohio:

Jan'y 1, 1878. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent.	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, Dec. 28, 1877, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.
(Signed) C. C. WAITE, *Sec'y & Tr.*

EXHIBIT "No. 12." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cin'ti & Muskingum Valley R. R. Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1878. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent.	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., N. Y.	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

356 Received, Jan'y 1st, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.
(Signed) C. C. WAITE, *Treas.*

EXHIBIT "No. 13." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treas., Zanesville, Ohio:

July 1, 1878. For semi-annual —, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent. is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, June 28, 1878, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 14." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio.

July 1, 1878. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Morgan Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 1, 1880, of the Pittsburgh, Cincinnati and St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) C. C. WAITE, *Tr.*

357 EXHIBIT "No. 15." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1879. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 1, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 16." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, O.:

Jan'y 1, 1879. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
J. E. DAVIDSON,
Ass't Comptroller.

Received, Zanesville, O., Jan'y 4, 1879, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.

(Signed) C. C. WAITE, *Tr.*

358 EXHIBIT "No. 17." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

July 1, 1879. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, McE., *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, June 27, 1879, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) C. & M. V. R'Y CO.,
Per C. C. WAITE, *Treas.*

EXHIBIT "No. 18." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to C. & M. V. R'y Co., Dr.

C. C. Waite, treas., Zanesville, Ohio:

July 1, 1879. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, McE., *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 1st, 1880, of the Pittsburgh, Cincinnati and St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) C. C. WAITE, *Tr.*

359 EXHIBIT No. "19." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1880. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by the Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, Dec. 29, 1879, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 20." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1880. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 1, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) C. C. WAITE, *Tr.*

360 EXHIBIT "No. 21." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

July 1, 1880. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, August 4, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 22." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

July 1, 1880. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, July 3, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) C. C. WAITE, *Tr.*

361 EXHIBIT "No. 23." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1881. Semi-annual interest, due this day, on the mortgage bonds of the C. and M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by the Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, December 28, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.

(Signed) C. C. WAITE, *Tr.*

EXHIBIT "No. 24." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

C. C. Waite, treasurer, Zanesville, Ohio:

Jan'y 1, 1881. Semi-annual interest, due this day, on the mortgage bonds of C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 6, 1880, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) C. C. WAITE, *Treas.*

362 EXHIBIT "No. 25." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1881. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.
JNO. E. DAVIDSON,
Ass't Comptroller.

Received, July 5, 1881, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) W. F. BLACK,
Treas. C. & M. V. R'y Co.

EXHIBIT "No. 26." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1881. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined

by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, June 27, 1881, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) W. F. BLACK,
Treas. C. & M. V. R'y Co.

363 EXHIBIT "No. 27." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

Jan'y 1, 1882. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by the Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. C. DAVIDSON,
Ass't Comptroller.

Received, Dec. 28, 1881, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above amount.

$26,180.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

EXHIBIT "No. 28." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

Jan'y 1, 1882. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 20, 1882, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

364 EXHIBIT "No. 29." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1882. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, June 27, 1882, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

EXHIBIT "No. 30." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio.

July 1, 1882. Semi-annual interest, due this day, on the mortgage bonds of C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, July 6, 1882, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) W. F. BLACK,
Sec'y and Treas. C. & M. V. R'y Co.

365 EXHIBIT "No. 31." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati and St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1883. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, January 6, 1883, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

EXHIBIT "No. 32." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

Jan'y 1, 1883. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by the Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. W. RENNER, *Auditor.*

Approved for payment.

JNO. E. DAVIDSON,
Ass't Comptroller.

Received, December 27, 1882, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

366 EXHIBIT "No. 33." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1883. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, June 29, 1883, of the Pittsburgh, Cincinnati and St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) W. F. BLACK,
Treas. and Sec'y.

EXHIBIT "No. 34." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1883. Semi-annual interest, due this day, on the mortgage bonds of the C. and M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by the Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.
J. W. RENNER,
Ass't Comptroller.

Received, June 27, 1883, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.
(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

367 EXHIBIT "No. 35." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

Jan'y 1, 1884. Semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been

duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, Dec. 27, 1883, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) W. F. BLACK, *Treasurer.*

EXHIBIT "No. 36." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, O.:

Jan'y 1, 1884. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000.00 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, January 5, 1884, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) F. W. BLACK,
Sec'y and Treasurer C. & M. V. R'y Co.

368 EXHIBIT "No. 37." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1884. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent.	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, July 28, 1884, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.
$26,320.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

EXHIBIT "No. 38." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

July 1, 1884. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by

me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, June 27, 1884, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.

$26,180.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

369 EXHIBIT "No. 39." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati & Muskingum Valley R'y Co., Dr.

W. F. Black, treasurer, Zanesville, Ohio:

Jan'y 1, 1885. For semi-annual interest, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $748,000 bonds represented by Moran Bros., New York	26,180 00
	$26,320 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.

J. W. RENNER,
Ass't Comptroller.

Received, Jan'y 7, 1885, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand three hundred and twenty dollars in full for the above account.

$26,320.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y Co.

EXHIBIT "No. 40." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

W. F. Black, treas., Zanesville, Ohio:

Jan. 1, 1855. For semi-annual —, due this day, on the mortgage bonds of the C. & M. V. R'y Co., viz., $1,500,000 at 3½ per cent., is	$52,500 00
Less the interest on $752,000 bonds held by Penna. R. R. Co.	26,320 00
	$26,180 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) A. McELEVEY, *Auditor.*

Approved for payment.
J. W. RENNER,
Ass't Comptroller.

Received, Dec. 27, 1884, of the Pittsburgh, Cincinnati & St. Louis Railway Company twenty-six thousand one hundred and eighty dollars in full for the above account.
$26,180.00.

(Signed) W. F. BLACK,
Treasurer C. & M. V. R'y.

370 EXHIBIT "No. 41." Deposition of M. C. Spencer.

Pittsburgh, Cincinnati & St. Louis Railway Company to Cincinnati and Muskingum Valley R'y Co., Dr.

Jno. E. Davidson, treasurer, Pittsburgh, Pa.:

Jan'y 1, 1886. For amount necessary to pay interest which became due July 1, 1885, on the mortgage bonds of the Cincinnati and Muskingum Valley Railway Company, payment of which at the time of maturity was temporarily restrained by the court of common pleas of Jefferson county, Ohio, in the suit of Samuel Jeanes *et al. vs.* The Pittsburgh, Cincinnati and St. Louis Railway Company and The Cincinnati and Muskingum Valley Railway Company, said court having ordered in the final decree in said suit that said sum be now paid, and this payment is made in pursuance of said decree—$1,500,000 at 3½ per cent.	$52,500 00

I certify that the above account has been duly authorized and approved by the proper officers, that the same has been examined by me and found correct, and that the original thereof has been duly registered and filed in the office of the auditor of disbursements.

(Signed) J. INSTAN,
Auditor of Disbursements.

Approved for payment.
J. W. RENNER,
Ass't Comptroller.

Received, Pittsburgh, Jan. 2, 1886, of the Pittsburgh, Cincinnati & St. Louis Railway Company fifty-two thousand five hundred dollars in full for the above account.
$52,500.00.

(Signed) JNO. E. DAVIDSON,
Treasurer C. & M. V. R'y Co.

And afterwards, to wit, on the 17th day of Nov., A. D. 1886, the following agreed statements of facts, &c., were filed in the clerk's office of said court, clothed in words & figures following, to wit:

Agreed Statements of Facts, etc.

371 Circuit Court of the United States, Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE CINCINNATI & MUSKINGUM VALLEY RAILWAY CO. *et al.*

In Chancery. Jefferson Common Pleas.

SAMUEL JEANS *et al.*
vs.
THE CINCINNATI & MUSKINGUM VALLEY RAILWAY CO. *et al.*

On error in the supreme court of Ohio.

It is agreed between counsel for Charles Moran and Evan J. Henry, on the one part, and counsel for Samuel Jeans, Pittsburgh, Cincinnati and St. Louis Railway Company, and other defendants, on the other part, that the following agreed statement of facts, so far as the same or any part thereof are competent or relevant, may be read and taken as true at the trial or hearing of either of the first above-named suits:

First. That the railway property now known as the Cincinnati & Muskingum Valley railway was originally known as the Cincinnati, Wilmington and Zanesville railroad, the same being
372 owned by a company of that name, which was incorporated in Ohio about the year 1851; that on or about the 15th day of April, 1852, said Cincinnati, Wilmington and Zanesville Railroad

Company issued 7 per cent. bonds to the amount of $1,300,000 and secured the same by a mortgage upon the railroad of the company; that in consequence of default in the payment of certain interest upon said bonds proceedings were instituted in the United States court for the southern district of Ohio about the month of Feb., 1857, and such proceedings were had therein, by virtue of a decree rendered by said court, that said property was, on the 27th day of August, 1863, sold at public sale to Chas. Moran for the sum of $600,000, said sum being the highest amount bid for said property at said public sale.

Second. That the purchasers at said public sale, represented by Chas. Moran as aforesaid, reorganized said property and became incorporated as the Cincinnati and Zanesville Railroad Company, one of the terms of said reorganization being that the first-mortgage bonds of said reorganized company should amount to $1,300,000, bearing interest at the rate of seven per cent. per annum.

Third. That said Cincinnati and Zanesville Railroad Co. having defaulted in the payment of certain interest on said last-named series of bonds, judicial proceedings were instituted on or about the 30th day of April, 1869, in the circuit court of the United States for the southern district of Ohio, in pursuance of which and of a final order and decree of said court rendered in said suit an order of sale was issued to Chas. Moran, trustee and special master commissioner,

373 in pursuance of which order said Charles Moran did, on the first day of December, 1869, offer said railroad property at public sale and at such sale sold the same to Thos. L. Jewett for the sum of $1,004,000, that being the highest and best bid therefor; that the purchasers of said property at such sale, represented by Thos. L. Jewett as aforesaid, reorganized said property and became incorporated as the Cincinnati and Muskingum Valley Railway Company, one of the defendants in the above-named suits.

Fourth. That the paper hereto annexed marked "A" contains a correct transcript of the proceedings of the board of directors of the Pittsburgh, Cincinnati and St. Louis Railway Company at a meeting held Sept. 23, 1885, and recorded in Minute Book 3, page 285, so far as the same relates to the suit of Samuel Jeans against The Cincinnati and Muskingum Valley Railway Company and others, pending in the court of common pleas of Jefferson county, Ohio, and that the same may be read in evidence, so far as the same or any part thereof is relevant and competent, upon the trial or hearing of either of the first above-named suits.

Fifth. That the paper hereto annexed marked "B," purporting to be a statement from F. G. Darlington, secretary of the Cincinnati and Muskingum Valley Railway Company, so far as the same is competent and relevant, may be taken as true and read at the trial or hearing of either of the first above-named suits.

Sixth. That the paper hereto annexed and marked "C," purporting to be a certified transcript from the minutes of the board of directors of the Pennsylvania Railroad Company and of certain letters

374 which passed between J. M. Estep, counsel for Samuel Jeans, and George B. Roberts, president of Pennsylvania Railroad Company, is accepted as true and, so far as the same is rele-

vant and competent, may be read in evidence on the trial or hearing of either of the first above-named suits.

J. T. BROOKS,
Counsel for P., C. & St. L. Railway Company.
HOADLY, JOHNSON AND COLSTON,
Att'ys for Evan J. Henry, Solicitors for Charles Moran.
J. M. ESTEP, *Att'y for Samuel Jeans et al.*

"The president laid before the board the following communication:"

"A."

CADIZ, OHIO, *May* 23, 1885.

To the president and directors of the Pittsburgh, Cincinnati and St. Louis Railway Co.:

GENTLEMEN: I represent the Cadiz t'w'p trustees, who own 1,269 shares of stock in your railway company, and many other shareholders in said company, and on their behalf I write you concerning the lease of the Cincinnati & Muskingum Valley Railway Co. to the Pittsburgh, Cincinnati & St. Louis Railway Co., dated in December, 1872, and on their behalf I request that you exercise your powers
375 and take such prompt action as you reasonably can to have said lease rescinded or cancelled.

You are probably aware of the facts concerning the lease, but I will, as briefly as I can, state some of the grounds of our complaint and some of the reasons why we believe it should be and can be set aside or rescinded.

First. Because by its terms, operation, and effect it is a hard, unreasonable, and unconscionable bargain, made under express and implied representations and expectations which can never be realized, and, to that extent, it is without consideration and ruinous in its results to the *bona fide* stockholders of said lessee company.

Second. The facts and circumstances under which said lease was executed constituted a plain legal fraud upon the minority stockholders in said lessee company.

As to the first point: You are aware that by the terms of the lease the lessor was to provide for improvements and betterments to the property. This has never been complied with, and the lessee company, in order to operate said leased road with any safety, has already been compelled to expend about $140,000 for that purpose without any hope or chance of ever being reimbursed.

Besides, there has scarcely been one year since the lease was executed that the lessee Co. has not been compelled to advance large sums for operating expenses without any hope of return.

The greatest hardship, however, is that the lessor company is required to advance the money ($105,000) yearly to pay the interest on the $1,500,000 first-mortgage bonds of the lessor company,
376 and as by the terms of said lease this interest is "to be charged in open account" against the lessor, to be repaid out of the future net earnings of said road "and not otherwise," and as a fair trial has demonstrated that there never will or can be

any net earnings for that purpose, it is perfectly clear that these heavy burdens are to be constant drain upon the resources of the lessee company which can never be repaid and which will forever render the stock of said lessee company utterly worthless.

This arrangement, therefore (even if intended to be fair and just in the beginning), turns out to be entirely one-sided and substantially without consideration. It was entered into through a mutual mistake (on the supposition above) of most important and vital facts and should not be allowed to stand longer at the expense of the lessee Co., the loss already being nearly $1,000,000.

As to the second point: There were certain facts and conditions existing at the time of the lease, which have but recently come to the knowledge of the stockholders whom I represent, which will surely render the lease illegal as to them and a clear fraud upon their rights. Although these facts are no doubt well known to most of you I will briefly recall some of them.

We learn that at the date of this lease that the Pennsylvania Railroad Co. and the Pennsylvania Co. owned a majority of the stock in the P., C. & St. Louis Railway Co., and also a majority of the stock in the Cincinnati & Muskingum Valley Railroad Co., and also a majority or about $752,000 of the $1,500,000 7 per cent. bonds of "said last-named company; that previous to this lease said last-named company had never been able to pay the interest on
377 said bonds," and that the same were up to that date substantially worthless.

The motive, therefore, for this arrangement is apparent, and while the lease appears regular in form it is plain that one of the objects of the P. R. R. Co. and the Pennsylvania Co. was to divert the surplus earnings of the P., C. & St. L. R'w'y Co. to the payment of the interest on these $1,500,000 first-mortgage bonds, and thereby make them good at the expense of the minority stockholders of said lessee company.

The interests of the lessor and lessee companies were thus directly antagonistic. But the same power and interest controlling both companies, they were in no condition to make a binding contract in this regard. This lease was thus forced upon the lessee company without the consent or knowledge of the stockholders whom I represent. This is surely a plain fraud upon their rights, and upon both reason and authority it should be set aside.

We trust that your board will see the reasonableness of this request and take such prompt action as you can to have the matter rectified and the lease rescinded, and thus prevent the necessity of any further action by the stockholders. Will you please inform me as soon as you can conveniently whether you will take such action or not?

Hoping to hear from you soon, I remain, yours truly,

(Signed) J. M. ESTEP.

In reply to which he had addressed the following letter:

378 PHILAD'A, *June* 1, 1885.

Mr. J. M. Step, attorney-at-law, Cadiz.

DEAR SIR: Your letter of May 23rd, addressed to the president and directors of this company, requesting them to take steps to cancel and rescind a lease made to their company by the Cincinnati and Muskingum Valley Railway Company in December, 1872, has been received and carefully considered.

While it is true that the expectations which were entertained by both parties to this lease have not been realized, the present management of the Pittsburgh, Cincinnati and St. Louis Railway Company do not deem it wise to take any steps toward cancelling or rescinding the same, and they therefore decline so to do.

Yours truly,

(Signed) G. B. ROBERTS,
Pres't P., C. & St. L. R'y Co.

Whereupon the stockholders had brought suit to have the lease rescinded; that on Sept. 9, 1885, Mr. Moran, representing some of the bondholders, had taken steps to have the lease continued in force.

Whereupon it was, on motion—

Resolved, That the action of the president in addressing the letter declining to take any action in the premises be approved, and that the general counsel of this company be instructed to take such action in reference to said suits as in his judgment is neces-
379 sary to protect the interests of this company.

I hereby certify the foregoing to be a true and correct transcript from the minutes of a meeting of the board of directors of the Pittsburgh, Cincinnati and St. Louis Railway Company held Sept. 23, 1885. See Minute Book No. 3, page 357.

Attest:

[SEAL.] S. B. LEGGETT, *Secretary.*

EXHIBIT "B."

Cincinnati & Muskingum Valley Railway Co.; office of the superintendent & secretary, F. G. Darlington.

ZANESVILLE, OHIO, *Oct.* 25, 1886.

I hereby certify that I have made a careful examination of the minute books of the directors and stockholders of the C. & M. V. R'y Co. from the first day of January, 1873, to the 1st day of January, 1886, and that said minutes contain no reference whatever to any action by J. Edger Thompson and Charles Moran, trustees, or either of them adopting or confirming the lease of the C. & M. V. railway to the P., C. & St. L. R'y Co. nor any action by the stockholders or directors of said C. & M. V. R'y Co. assigning said lease to said trustees or in any manner placing the same under the mortgage previously executed by said company to said J. Edger Thomson and Charles Moran, trustees.

380 In testimony whereof I have hereunto set my hand and the official seal of said company this 25th day of October, 1886.

F. G. DARLINGTON,
Sec't'y C. & M. V. R'y Co.

EXHIBIT "C."

CADIZ, OHIO, *June* 4, 1885.

To the president and board of directors of the Pennsylvania Railroad Company.

GENTS: I represent the Cadiz township trustees, who own 1,269 shares of stock in the P., C. & St. L. R'y Co., and I also represent many other stockholders in said company. On their behalf I write you concerning the lease of the Cincinnati & Muskingum Valley Railway Co. to the P., C. & St. L. R'y Co., dated in Dec., 1872, in the hope that by the exercise of your power and authority you can and will take measures to have that lease rescinded.

I addressed a letter to the president and board of directors of the P., C. & St. L. R'y Co. on May 23rd, '85, requesting that company to take measures to have said lease rescinded. I have a reply from the president, of date June 1, '85, refusing to take any action in the matter. I stated pretty fully in that letter the grounds upon which we thought the lease could and ought to be set aside.

I can but repeat that statement here for you.

It should be set aside, as we believe, because—

1. By its terms and effect it is a hard and unreasonable bar-
381 gain, made under express and implied representations and expectations which can never be realized, and to that extent it is without consideration and ruinous to the *bona fide* stockholders of said lessee company.

2. The facts and circumstances under which said lease was executed constitute a plain fraud upon the minority stockholders of said lessee company.

As to the first point: You are aware that by the terms of the lease the lessor Co. was to provide for improvements and betterments to the property leased, yet this has never been complied with at all, and the lessee Co., in order to operate said road with any safety, has already been compelled to expend at least $140,000 for that purpose without any hope or chance of ever being reimbursed.

Besides, there is hardly one year since the lease was executed that the lessee company has not been required and compelled to advance large sums for operating expenses without any present or future hope of a return.

The greatest hardship, however, is that the lessee company is required to advance the money ($105,000 yearly) to pay the interest on the $1,500,000 first-mortgage bonds of the lessor Co., and as by the terms of the lease this advance is to be charged in "open account" against the lessor company, to be paid out of its future net earnings and "not otherwise," and as a fair trial has demonstrated that there never can or will be any net earnings for that purpose, it

is perfectly clear that these heavy burdens are to be a constant drain upon the resources of the lessee Co. which can never be repaid and which will forever render the stock of the lessee Co. utterly worthless. This agreement, even if intended to be fair in the
382 beginning, turns out to —, in fact, entirely one-sided and substantially without consideration. It was entered into through a mutual mistake (in the case supposed) of most important and vital facts, and up to this time has resulted in a loss to the lessee Co. of nearly one million of dollars. Surely it ought not to stand longer than necessary to take action to have it set aside.

As to the second point: There were certain facts and conditions existing at the time of the lease, which have but recently come to the knowledge of the stockholders whom I represent, which surely render the lease illegal as to them and a fraud upon their rights.

Although these facts are no doubt well known to most of you, I will briefly mention some of them.

We learn that at the date of the said lease the Pennsylvania R. R. Co. and the Pennsylvania Co. owned a majority of the stock in the P., C. & St. L. R'y Co., and also a majority of the stock in the C. & M. Valley Railway Co., and also a majority (or about $752,000) of the $1,500,000 7 per cent. first-mortgage bonds of the said last-named company; that previous to this lease said last-named company had never been able to pay the interest on said bonds, and that the same were up to that date substantially worthless.

Your object in having this arrangement made is therefore quite apparent. It was in part, of course, to have the surplus earnings of the P., C. & St. L. R'y Co. diverted to the payment of the interest on these bonds and thus make them good.

But this is done at the expense of the minority stockholders in said road, who have no interest in anything but the well-being
383 of their own road. The honest interests of the lessee and lessor companies were thus directly antagonistic, and they were not in a legal situation or condition to make a binding or legal contract in this regard.

Your stock and interests gave you a controlling power over both lessor and lessee, and I may say that it was simply one man acting as both lessor and lessee.

In form the lease appears regular on its face, but it was thus obtained at the expense and without the consent or knowledge of the stockholders whom I represent.

This was surely a fraud upon their rights, and the lease obtained by such means, both on reason and authority, should be set aside.

As you have the controlling power in said companies, as before stated, we ask you to exercise your powers as a majority stockholder and direct the P., C. & St. L. R'y Co. to take steps to cancel said lease.

I trust you will see the justice of this request, and that you will take prompt action in the matter and thus prevent any further action by the stockholders, and advise me as soon as convenient whether you will so do or not.

Yours truly,

(Signed) J. M. ESTEP.

384 THE PENNSYLVANIA RAILROAD COMPANY,
OFFICE OF THE PRES'T, PHILADELPHIA, *June* 12, 1885.

Mr. J. M. Estep, Cadiz, Ohio.

MY DEAR SIR: Your letter of June 4th was laid before the board of the Pennsylvania Railroad Company at their meeting on Wednesday, the 10th inst., and it was, on motion, "referred to the president to make reply after consultation with the general solicitor."

The present officers of the Pittsburgh, Cincinnati & St. Louis Railway Co. are charged with the responsibility of managing the affairs of that company, and the Pennsylvania Railroad Company as a stockholder of that company will not assume to dictate to those officers as to what they shall do in the discharge of their official duties.

Whatever part the Penna. Railroad Co. has heretofore taken in this matter has been taken in good faith and for the purpose of accomplishing what was at the time believed to be for the best interests of all parties concerned, and it will do nothing at this late day toward unsettling what was then accomplished. Your request to act in the manner indicated is therefore declined.

Very respectfully,

(Signed) G. B. ROBERTS, *President.*

I hereby certify that the above is a full, true, and correct copy of the letter of Mr. J. M. Estep, of Cadiz, Ohio, dated June 4th,
385 1885, which was submitted at a meeting of the board of directors of the Pennsylvania Railroad Company held on the tenth day of June, 1885.

Attest:

[SEAL.] JNO. C. SIMS, JR., *Secretary.*

I hereby certify that the following is a true and correct copy from the minutes of action had at the meeting of the board of directors of the Pennsylvania Railroad Company held at the office of the company, in the city of Philadelphia, on the 10th day of June, 1885—namely:

There was submitted and read a letter, under date of June 4, 1885, from J. W. Estep, of Cadiz, Ohio, asking that the lease of the Cincinnati & Muskingum Valley railway to the Pittsburgh, Cincinnati and St. Louis Railway Company be rescinded, which was, on motion, referred to the president to make reply after consultation with the general solicitor.

Attest:

[SEAL.] JNO. C. SIMS, JR., *Secretary.*

386 And afterwards, to wit, on the 18th day of December, A. D. 1886, an entry was made upon the journal of the said court, clothed in the words and figures following, to wit:

B., 37.

Now come the parties, by their solicitors, and, by consent, it is ordered that the several holders of bonds and coupons of the Cin-

cinnati and Muskingum Valley Railway Company secured by the mortgage of which the complainant is trustee are at liberty to receive the principal of the coupons which matured January first, 1886, and that upon each payment they may surrender the said coupons without prejudice to their rights to claim and enforce in this case by such proceedings as may be open to them, according to law and equity, the collection, by foreclosure or otherwise of the mortgage described in the bill or otherwise, of the interest upon the said coupons so paid and surrendered accrued to the date of such payment.

This entry is made by consent of all parties to the cause and without prejudice to the rights of any of them in any respect.

By like consent leave is given to complainant to file supplemental and amended bill setting up defaults in payment of coupons which matured July 1st, 1886, or may mature January 1st, 1887, the said supplemental bill to be filed, however, not later than the fifth day of January, 1887, and to be without prejudice to the right of any party to a hearing at this term.

387 And afterwards, to wit, on the 3rd day of January, A. D. 1887, the following 2nd supplemental bill was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

2nd Supplemental Bill.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY, The Pittsburgh, Cincinnati and St. Louis Railway Co., Samuel Jeans, *et al.*

Second amended and supplemental bill of complaint.

Now comes the complainant, Charles Moran, and, by leave of the court first had and obtained and without withdrawing any averment by him heretofore made in this case, by way of second amended and supplemental bill of complaint, states that since the filing of his original and amended and supplemental bills herein, to wit, on the 1st days of July, 1886, and January, 1887, there has accrued and grown due coupons or interest warrants upon the bonds described in his said bills, viz., to the amount, on each of said days, of three and one-half per cent. upon the principal sum of $1,500,000 therein named, being in all the sum of $105,000; that said coupons or interest warrants are due, with interest thereon from the first days of July, 1886, and January, 1887, respectively, and are held in part by this complainant and in part by other persons, on
388 whose behalf and as trustee under the said mortgage or deed of trust described in the original bill filed in this cause this

complainant brings this amended and supplemental bill in chancery.

And this complainant further states that heretofore, at the May term, 1886, of the circuit court in and for the county of Jefferson, in the State of Ohio, the said appeal of Evan J. Henry, in said collusive suit described in said original, amended, and supplemental bills brought by Samuel Jeans *et al.* against the railway companies aforesaid and others, proceeded to hearing upon a motion made on behalf of said Jeans and others to dismiss said appeal, and, having been so heard therein, the appeal was dismissed; and the said Evan J. Henry thereupon filed his petition in error to reverse said dismissal and procure the waiver of service of process thereon, and the same is now pending in the supreme court of Ohio and wholly undetermined, and supersedeas bond has been given therein, and the said dismissal is wholly superseded thereby.

Wherefore this complainant prays as in his original, amended, and supplemental bills; and, further, that the decree to be rendered herein may be also based and founded upon the defaults in payment of the said coupons or interest warrants which matured on the first days of July, 1886, and January, 1887, and others that may hereafter mature, and that, in default of the payment thereof within a stated time to be fixed by the court, relief may be had as prayed in said original, amended, and supplemental bills, even although the coupons or interest warrants described in the said bills and which matured on the first days of July, 1885, and January, 1886, may be paid or tendered to be paid in whole or in part; and, further, that the defendant The Pittsburgh, Cincinnati and St.
389 Louis Railway Company, in addition to the relief prayed against it in the said original, amended, and supplemental bills, may be restrained and enjoined from asserting or pleading the bringing or pendency of the said suit in the Jefferson common pleas or the granting of the judgment therein or the dismissal of said appeal or any judgment that may hereafter be rendered therein or on said appeal by way of defense in any action at law which may be brought upon said lease or upon said coupons or interest warrants or to enforce the performance of any legal duty entered into between said railway companies, and for such other and further relief as the complainant may in equity and good conscience be entitled to.

HOADLY, JOHNSON AND COLSTON,
Solicitors for Complainant.

And afterwards, to wit, on the 26th day of M'ch, A. D. 1887, an entry was made upon the journal of the court aforesaid, clothed in the words and figures following, to wit:

O. B., p. 75.

Upon motion of attorney for defendants and for good cause shown leave is hereby granted to file the separate answers of the Pittsburgh, Cincinnati and St. Louis R'y Co. and of Samuel Jeans *et al.* to the second amended and supplemental bill of complainant herein, and the same are filed.

390 And afterwards, to wit, on the 26th day of March, A. D. 1887, the following answer of the P., C. & St. L. R'y Co. was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Answer of the P., C. & St. L. R'y Co.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS R'Y CO. and Others. } In Equity. No. 210.

The answer of the Pittsburgh, Cincinnati and St. Louis Railway Company to the second amended and supplemental bill of complaint of Charles Moran, complainant.

Now comes this defendant and, by leave of the court first had and obtained and by way of answer to the second amended and supplemental bill of complaint, or so much thereof as this defendant is advised it is material or necessary for it to make answer to, *and* answering, says:

It admits that after the dismissal of the appeal attempted to be taken by said Evan J. Henry to the circuit court of Jefferson county, Ohio, as stated in the separate, amended, and supplemental answer of this defendant heretofore filed herein, said Evan J. Henry filed his petition in error, the prayer of which is that said judgment dismissing said appeal may be reversed, and procured the waiver of
391 service of process thereon, and that the same is now pending thereon, and that the same is now pending in the supreme court of Ohio and wholly undetermined, and that supersedeas bond has been given therein to stay the execution of said judgment dismissing said appeal pending said petition in error.

But this defendant denies that the said dismissal is wholy superseded thereby. On the contrary, it avers that *as* said judgment of dismissal remains in full force, and that the execution thereof is only stayed by the said proceedings in error and supersedeas bond pending said petition in error, as fully appears by the order made thereon by said supreme court of Ohio in said proceeding in error of said Henry against Jeans and others, a duly certified copy of which order is herewith filed, marked "Exhibit G," and made part hereof as fully as if recited at length and set forth herein.

This defendant therefore avers and insists, as it has heretofore averred and insisted, that the said judgment of the court of common pleas of Jefferson county, Ohio, described in the original answer herein of this respondent, adjudging said lease in the original bill described null and void, is in full force.

——.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

J. T. Brooks, being duly sworn, says that he is the general counsel of the foregoing defendant, The Pittsburgh, Cincinnati and St. Louis R'y Co., said company being incorporation of the States of Ohio and West Virginia and Pennsylvania, and that the facts stated in the foregoing answer of said company are true, as he verily believes.

J. T. BROOKS.

392 Sworn to by said J. T. Brooks and by him subscribed in my presence this 21st day of March, 1887.

W. C. BOYLE,
[SEAL.] *Notary Public.*

And afterwards, to wit, on the 26th day of March, A. D. 1887, the following answer of Samuel Jeans *et al.* was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit.

Answer of Samuel Jeans et al.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and Others. } In Equity. No. 210.

The joint and several answers of Samuel Jeans, The Trustees of Cadiz Township, Harrison County, Ohio; The Trustees of Rumley Township, Harrison Co., O., the trustees of Steubenville Township, Harrison Co., O., and The City of Steubenville to the second amended and supplemental bill of complaint of Charles Moran, complainant.

392½ Now come these defendants respectively and, by leave of the court here first had and obtained and by way of answer to the second amended and supplemental bill of complaint, or so much thereof as these defendants are advised it is material or necessary for them to make answer to, *and* jointly and severally answering, say:

They admit that after the dismissal of the appeal attempted to be taken by the said Evan J. Henry to the circuit court of Jefferson Co., O., as stated in the joint and several and separate, amended, and supplemental answers of these defendants heretofore filed herein, said Evan J. Henry filed his petition in error, the prayer of which is that said judgment dismissing said appeal may be revoked, and procured the waiver of service of process thereon, and that the same is now pending in the supreme court of Ohio and wholly undetermined, and that supersedeas bond has been given therein to stay

the execution of said judgment dismissing said appeal pending said petition in error.

But these defendants deny that the said dismissal is wholly superseded thereby. On the contrary, they aver that said judgment of dismissal remains in full force, and that the execution thereof is only stayed by the said proceeding in error and supersedeas bond pending said petition in error, as fully appears by the order made thereon by said supreme court of Ohio in said proceeding in error of said Evan J. Henry against said Jeans and others, a duly certified copy of which order is herewith filed, marked "Exhibit G," and made a part hereof as fully as if recited at length and set forth herein.

These defendants therefore aver and insist, as they have heretofore averred and insisted, that the said judgment of the court
393 of common pleas of Jefferson county, Ohio, described in the original answer herein of these respondents, adjudging said lease in the original bill described null and void, is in full force.

HARRISON, OLDS AND MARSH,
Solicitors for Samuel Jeans et al.

STATE OF OHIO, }
Harrison County, } *ss:*

James N. Haverfield, D. L. Hughes, and Patrick Lynch, being duly sworn, do depose and say that they are The Trustees of Cadiz Township, Harrison Co., Ohio, one of the defendants named in the foregoing answer; that they have read the same and know the contents thereof, and that the several matters and things set forth therein are, according to the best of their knowledge, information, and belief, true in substance and in fact.

JAS. N. HAVERFIELD.
D. L. HUGHES.
PATRICK LYNCH.

Subscribed and sworn to before me this 18th day of March, 1887.

JAMES MOORE,
[SEAL.] *Notary Public.*

And afterwards, to wit, on the 28th day of Nov., A. D. 1887, the following opinion of Judge H. E. Jackson was filed in the clerk's office of the said court, clothed in the words and figures following, to wit:

394 *Opinion of Judge Howell E. Jackson.*

Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

CHARLES MORAN, Complainants,
vs.
THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY Co. *et al.*, Respondents. } In Equity.

Suit for foreclosure of mortgage.

Under proper authority of law and resolutions of the corporation the Cincinnati and Muskingum Valley Railway Co. (hereafter for brevity called the Valley Railway Co.) on Sept. 1, 1870, executed to Charles Moran and J. Edger Thomson, as joint trustees, a conveyance of its property to secure certain bonds of the company to the amount of $1,500,000, dated Sept. 1, '70, and payable January 1st, 1901, with interest coupons attached and payable semi-annually in the city of New York. The company's line of road at the date of this mortgage was *contracted* from Morrow to Zanesville, Ohio, but now to be extended to Dresden, Ohio. In pursuance of the resolutions of the board of directors this mortgage conveys to said trustees or to the survivor in fee simple all the right, title, and interest of said Valley Railway Co. in and to its line of railroad from Morrow to Dresden, "with the appurtenances, now completed or to be hereafter constructed, together with all the lands, tenements, hereditaments, fixtures, buildings, cars, engines, tools and machinery, franchises, privileges, interest, and estate of the
395 first party appertaining thereto which the party of the first part now possesses and owns or may hereafter acquire," in trust for the equal benefit and security of the bond and coupon holders, with the provision that "until default shall be made in respect to something herein to be done or kept by the party of the first part it shall be suffered and permitted to possess and operate, manage and enjoy, its said railway, with its apputenances and appendages, and to take and use the rents, income, profits, and issues thereof in the same manner and with the same effect as if this deed had not been made."

It further provides that after ninety days' default by the company in the payment of interest or principal of said bonds the trustees or the survivor of them, on request of the holders of the one-third of the outstanding bonds, may and shall enter into and take possession of the mortgaged premises, hold, use, manage, and employ the same, making all needful repairs, alterations, and additions, and, after the payment of all expenses incident thereto, apply the proceeds thence arising to the "*pro rata*" payment of all principal and interest due and unpaid on said bonds. It likewise contains a power of sale to be exercised by the trustees or the survivor at the request of one-half in amount of the bondholders, and in the event of a sale the trustees are empowered to execute a good and

sufficient deed of conveyance in fee simple to the purchaser for the property and distribute the proceeds, after paying the expenses of the sale, amongst those entitled to the same. Then follows this provision: "And the said party of the first part hereby covenants to execute and deliver any further suitable conveyance or conveyances
that may be requisite for carrying into effect the object of
396 these presents, particularly for the more perfect assurance of
any property hereafter acquired by the party of the first part and included in the description in this deed."

After the execution and due *resignation* of this mortgage the mortgagor, said Valley Railway Co., leased and demised to the Pittsburgh, Cincinnati and St. Louis Railway Co. (hereafter called, as it is most familiarly known as, the Pan Handle Company) for the term of 99 years from January 1st, 1873, its entire line of road, constructed and to be constructed, together with all the depots, station buildings, appurtenances, and property, real and personal, thereunto belonging and appertaining. This lease appears to have been ratified or approved by the majority of the stockholders of the two companies at meetings held by them respectively for that purpose. The lessor covenants and agrees "that the party of the second part (the lessee) shall, at all times during the term aforesaid, have full and exclusive power, right, and authority to use, manage, and work the said railway of the said party of the first part and shall have the right to fix the tolls thereon (but not at a higher rate than is authorized by the charter of the party of the first part); and, further, said party of the second part shall have full, free, and exclusive right to charge and collect all of said tolls on and *exclusive right to charge and collect all of said tolls on* freight charges and dues to accrue from said road during said term and to appropriate the same in the manner hereinafter mentioned, and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid and all other lawful power and privileges which can or
may be lawfully exercised and enjoyed on or about the said
397 demised railway and property as exclusively, amply, fully, and
entirely as the same might or could have been used, exercised, and enjoyed by said party of the first part had this lease and contract not been made, and as exclusively, fully, amply, and entirely as said party of the first part have authority by law to grant the same."

The lessee company covenants that it "will at all times during the hereby demised term work, use, manage, maintain, operate, and keep in public use the railway of the party of the first part, with its appurtenances &c., and will so work and operate said railway and appurtenances" with its equipment as shall in the judgment of the lessee reasonably be required for and properly adapted to promptly and fully accommodate the business thereof, and shall and will collect and receive all of the said tolls, freight charges, and dues which shall accrue as aforesaid and apply and appropriate the same in the way and manner following, to wit: First, to maintain and repair the railway and property and pay operating expenses, including 8 per cent. on the engines of the lessor company used on the

road and the usual charge for its cars employed thereon, premiums on insurance, and all taxes assessed against the road and property by the State or United States. Then follow these claims: "It being distinctly understood that certain work yet to be done and required to perfect and completely finish the said road hereby demised, as well as such additions and improvements thereto as the parties of the second part shall determine to be necessary from time to time for the prompt and economical movement of the traffic on and over said road, shall be done by and at the expense of the said first party; 2nd, to pay the surplus, if any thereafter remains, to the treasurer of the party of the *party of the* first part, pro-
398 vided, however, that in the event of the net earnings of the line of road hereby demised not being sufficient to protect the interest on the existing first-mortgage bonds of the party of the first part as it matures the party of the second part shall advance the needful means to pay the coupons at maturity, charging any such advance over net earnings in open account, to be returned out of the subsequent earnings and not otherwise."

The other general provisions of the lease, such as the requirement to keep the demised railway & property in repair, the keeping of accurate accounts by the lessee, &c., need not be especially noticed, as they have no bearing upon the questions presented for determination. The considerations which led to this lease, the motives prompting its promoters, and the purposes sought to be accomplished by it, as disclosed in the records, need not be set out in detail. They form a curious and interesting chapter in the history of railroad management.

The means by which its ratification and confirmation was procured may be briefly referred to as bearing upon one of the questions raised in the case. It appears that the Pennsylvania Railway Company, a corporation of the State of Penna., in its own name & in the name of the "Pennsylvania Co.," another corporation of said State, wholly in the interest of and controlled by the Pennsylvania Railway Company, held and owned a large majority of the stock of both said lessor and lessee companies; that said Pennsylvania Railway Company also held and owned $752,000.00 or a majority in value of said $1,500,000 first-mortgage bonds of said Cincinnati and Muskingum Valley Railway Co.; that the president of said Valley Railway Co. was both director and the general counsel of the "Pittsburgh, Cincinnati and St. Louis Railway Co." (the lessee); that in June, 1872, the directors of this last-mentioned Co. adopted a resolution authorizing its president to execute a lease of the Valley
399 Railway Co. to the "Pittsburgh, Cincinnati and St. Louis Railway Company" on such terms and conditions as might be prepared by its general counsel, who was also the president of said Valley Railway Co. The lease was accordingly prepared and executed, as already set forth, and its ratification and confirmation on the part of both the lessor and lessee companies was procured by the controlling interest and influence of the Pennsylvania Railway Co. on condition with the aid and assistance of Moran and others, who were large holders of the first-mortgage bonds of said Valley Railway Co.

as well as stockholders therein. The primary object and purpose of this lease, as disclosed by the whole transaction, was to obtain from the lessee, as an advance to the lessor over and above the net earnings of the demised railroad, the means with which to pay the semi-annual interest on said first-mortgage bonds of the lessor held and owned by the promoters of the scheme.

The Pan Handle Co. (the lessee), after taking possession of the demised road and property under the lease thus made and confirmed, expended for betterments and improvements which the lessor company agreed to make, but failed and neglected to do, the sum of $140,969.00, which the lessor has never refunded, and, *by* which, by reason of its insolvency, it is unable to repay. It further appears that from the 1st of January, 1873, when the lease took effect, to the 1st of January, 1886, the net earnings of the demised premises, after paying operating expenses *by the lease* as provided by the lease, were not sufficient to protect the interest on said first-mortgage bonds of the Valley Railway Co., and that the lessee between said dates, under and in compliance with the terms of clause 2nd above quoted, made
400 advances out of its own means to the lessor company of more than $1,000,000 to enable the latter to pay the interest coupons of its bonds as they matured.

This large advance by the lessee to the lessor over the net earnings of the road by the terms of the lease is "to be returned out of the subsequent earnings (of the demised road) and not otherwise." It *is* not been refunded to the lessee and cannot be either from that source or other assets of the lessor, the latter being insolvent and the leased road being unable to cover such amount after paying operating expenses and keeping the railway in repair. In this condition of affairs, with the means of the lessee company being constantly diverted in making advances to the lessor to enable the latter to meet the interest on its bonds, to the serious injury and detriment of the lessee and its stockholders, certain stockholders of the Pan Handle Co., representing about 6,870 shares of the capital stock of said company, in April or May, 1885, made a written request and application to the president and directors of the said Pittsburgh, Cincinnati and St. Louis Railway Co. (the lessee company) to take steps, by legal proceedings or otherwise, to cancel and terminate said lease.

Said board of directors, by formal resolutions, refused to comply with this request and demand. Thereupon said stockholders, consisting of Samuel Jeans and the trustees of several Ohio townships and city of Steubenville, on the 20th day of June, 1885, filed their bill or petition in the court of common pleas of Jefferson county, Ohio, against said "Pittsburgh, Cincinnati and St. Louis R'y Co." and the "Cincinnati & Muskingum Valley Railway Co." (the lessor and lessee in said lease) praying, on behalf of themselves and other minority stockholders in interest with the petitioners, that
401 said lease and agreement may be declared null and void and cancelled and all further operation thereunder by either party enjoined, and especially that the Pittsburgh, Cincinnati and St. Louis R'y Co. be perpetually restrained from using the funds of

said Co. to make any further advances for interest on the bonds of the lessor for the operation and maintenance of said leased road or otherwise under said lease, and that the Cincinnati & Muskingum Valley Co. be enjoined from attempting to enforce said lease, &c. The general grounds on which petitioners asked this relief were that said contract of lease in its terms and operation was a hard, oppressive, and unconscionable agreement and a fraud upon the rights of plaintiffs; that the lessee could devise no profit therefrom in any event, as the net earnings were to be turned over to the lessor company, which left the lessee's agreement to advance the means needed to pay the lessor's interest wholly without consideration; that the earnings of the road were entirely insufficient to supply the funds required to meet that interest—that the lessee company had already required to meet that interest; that the lessee company had already paid out large sums for improvements which the lessor was bound to make and in the way of advancement to the lessor to pay the interest on its bonds which the lessor could not reimburse; that the lessor could not comply with its covenants, which formed the consideration of the lessee's undertakings; that the influences and means by which said lease was brought about, executed, and accepted constituted a fraud upon the plaintiffs and other minority stockholders in said lessee company; that the Pennsylvania Railway Co., in connection with the Pennsylvania Company, which it controlled, owned a large majority of the stock in both said lessor and lessee companies and used this con-
402 trolling interest and influence to ratify said lease; that it had been requested to cancel and annul said lease, but refused to take any steps in that direction; that the plaintiff Samuel Jeans, when the lease was submitted to the stockholders of the lessee company for approval, had entered his written protest against its execution, but had no knowledge of the adverse interest so controlling and causing said lease to be executed until about April 1, 1885, and that the other plaintiffs had never approved said lease and had no knowledge or information of the circumstances under which it was executed or of the adverse interest so controlling and causing it to be executed until April, 1885. The lease was made an exhibit to the bill. The defendants were regularly served with process on the 17th day of July, 1885. The Cincinnati & Muskingum Valley Co. appeared by counsel and demurred to the petition.

The other defendant, The Pittsburgh, Cincinnati and St. Louis R'y Co., appeared August 17, 1885, and answered the petition. On the 24th day of Nov., 1885, the demurrer of the Valley R'y Co. was overruled by the court, to which said defendants excepted, and, failing to plead further, the cause was further heard and submitted to the court "upon the pleadings and evidence, and the court, being fully advised in the premises," found the allegations of the petition were true, and that plaintiffs were entitled to the relief prayed for, and thereupon adjudged and decreed that said lease be vacated, set aside, and declared null and void.

It was further decreed "that on or before January 1, 1886,
403 the said Pittsburgh, Cincinnati and St. Louis R'y Co. surren-

der and deliver up to said Cincinnati & Muskingum Valley R'y Co. the said demised railway and property" in as good order and repair as when received by the lessee company. Said lessee company was perpetually enjoined and restrained from operating said leased road under said lease, and the lessor Co., the Cincinnati and Muskingum Valley R'y Co., was also perpetually enjoined from enforcing or attempting to enforce said lease and contract against said lessee, who was, however, directed by the decree to pay or advance the sum of $52,500, the amount needed by the lessor to meet the interest on its bonds falling due July 1, 1885.

From this decree neither of said defendants appealed. On the 10th Dec., 1885, during said term of the court at which said decree was rendered, one Evan J. Henry was, upon his motion, made a party defendant in said cause and allowed to file his answer therein, which he did for himself and other stockholders of the Cincinnati and Muskingum Valley Railway Company who might unite with him in the defense of said suit. In his answer Henry insisted upon the validity of the lease. No action appears to have been taken thereon, nor was any new decree entered in the cause; but on the 14th day of Dec., 1885, said Henry filed an appeal bond in the case, the conditions of which recited "that whereas the said Evan J. Henry has taken an appeal from a certain judgment and decree rendered against him in favor of the said" Pittsburgh, Cincinnati and St. Louis R'y Co. and others interested, in the court of common pleas within and for the county of Jefferson, in the State of
404 Ohio, at the October term thereof, A. D. 1885, to the circuit court within and for the county aforesaid, &c. At the May term, 1886, of said circuit court said appeal was, on motion, dismissed. Whereupon said Henry tendered his bill of exceptions, which being allowed he presented his petition in error to the
405 supreme court of Ohio, where the same is now pending *allowed he presented his petition in error to the supreme court of Ohio, where the same is now pending.*

In pursuance of the directions of said decree the Pittsburgh, Cincinnati and St. Louis R'y Co., as lessee as aforesaid, on the 6th day of January, 1886, surrendered and delivered up the possession of said demised railway and property to the lessor, the said Cincinnati & Muskingum Valley R'y Co., which has since had full control of the same.

Charles Moran, the surviving trustee of the mortgage made by the Cincinnati and Muskingum Valley R'y Co. to secure its first-mortgage bonds, knew of the pendency of this suit of Sam'l Jeans *et als.* to annul said lease, but took no steps to intervene therein or defend the same. The Cincinnati and Muskingum Valley Co. having made default in the payment of the interest on its said bonds falling due July 1, 1885, and the aforesaid suit of "Samuel Jeans *et als.*" being then pending in the State court to cancel and annul said lease, the said Charles Moran, as surviving trustee under the aforesaid mortgage, on Sept. 9th, 1885, filed his bill in this court against the said Valley R'y Co., the mortgagor, the Pittsburgh, Cincinnati, and St. Louis R'y Co., and the several plaintiffs in the action brought in

the Jefferson common pleas, alleging that as mortgagee he was entitled to have said mortgage of Sept. 1st, 1870, foreclosed; that he was entitled to have the aforesaid lease, with the covenants therein contained, enforced against the lessee company for the use & benefit of the bondholders of the lessor Co., and that said suit of Samuel Jeans *et al.* against said railway companies was a collusive scheme, instigated and put on foot by the lessee company, &c., to terminate said lease and thus defeat the rights of the lessor's bondholders, for whom he, as trustee under the mortgage, represented, &c., &c.

406 The complainant then prays "for the appointment of a receiver to take possession of and control the rental aforesaid payable by the Pittsburgh, Cincinnati and St. Louis R'y Co. to the Cincinnati & Muskingum Valley R'y Co. under and by virtue of the provisions of said lease during the pendency of this suit, and that upon final decree it may be held and established, notwithstanding said collusive suit and anything done therein, that the said lease and contract in equity belong and appertain to the holders of said mortgage bonds and to this plaintiff, as their trustee, as a muniment and part of their title, and that said lease and contract are valid, and that said holders and this complainant are entitled to enforce the same and to collect said rents as security for said bonds, and that all the estate and reversion of the lessor in said railway property, with the benefit of the lease aforesaid and the right to receive the rents accruing upon said lease and to enforce the performance of its covenants, may be sold and disposed of by a master commissioner to be appointed by this court, but without dispossessing the said lessee company of its possession, or any of its rights under said lease, and for other and further relief as in equity complainant may prove to be entitled to." The mortgagor having made default in the payment of the interest *following* due January 1st, 1886, the complainant filed an amended and supplemental bill, asking for a decree therein, and after non-payment of the interest maturing July 1, 1886, and January 1, 1887, he filed a second amended and supplemental bill, asking that *there* might be included in his decree, with the further prayer in both said bills "that the defendant The Pittsburgh, Cincinnati and St. Louis R'y Co., in addition to the relief prayed against it in the original bill, may be restrained and

407 enjoined from asserting or pleading the pendency of the said suit in Jefferson common pleas or the granting of the judgment therein or any judgment that may hereafter be rendered therein by way of defense in any action at law which may be brought upon said lease or upon said coupons or interest warrants or to enforce the performance of any legal duty entered into between said railway companies," and for general relief.

The Cincinnati & Muskingum Valley R'y Co. has failed to answer and *in* in default. The other defendants have separately answered both the original and supplemental bills. They set up & rely, by way of defense, upon the pendency of the action and the judgment in said Jefferson common pleas annulling said lease. They deny that said suit was collusive or in any way fraudulent as to complainant. They insist that said lease was procured by such

fraudulent devices and breaches of trust as rendered it void or voidable by the minority stockholders of the lessee company, whose rights and interests it injuriously affected, but whether valid or invalid they claim that complainant has no interest in said lease and has no right to enforce its provisions, &c. No receiver was ever appointed.

There is no question or dispute as to the rights of the complainant to a decree for the foreclosure of said mortgage by the sale of the mortgagor's equity of redemption in and to the property and interests covered by the mortgage.

The main ground of controversy between the litigant parties relates to the lease. The real and avowed purpose of the suit is to continue this lease in force against the lessee company in favor of the bondholders or purchasers under the sale herein asked
408 for, to the end that he or they may have and preserve the benefit of the lessee covenant to make advances beyond the net earnings of the road sufficient to pay the interest on the bonds as it matures, and look alone to the earnings of the demised railway for its reimbursement of such advances. This relief is sought while at the same time the court is asked to sell and thereby terminates the estate of the lessor (which supports the lease). Can these two things as rights or remedies coexist? The trust created by the mortgage will be fully executed when the foreclosure is completed as against the mortgagor. The purchasers of the mortgaged property will not hold the same, either as bondholders or for the benefit of bondholders, who can look alone to the proceeds of sale. Can the court sell and assign and cause to be transferred to such purchaser at foreclosure sale and to hold for his own benefit this covenant of the lessee to make advances of *some* sufficient to pay interest on a debt which has caused by foreclosure to be a trust against the property? Can this court compel the lessee Co. to advance to the purchaser under foreclosure sale semi-annually sums equal in amount to the interest on the bonds when by the act of foreclosure the mortgagor has become legally extinct or when its right to exist and exercise corporate franchises has not only ceased, but by decree has passed to another?

In other words, when there will no longer be any mortgagor, any lessor, any bondholder as such, when the trust on the property in favor of such bondholders will have ceased, can this court keep alive for 99 years in favor of the purchaser under the foreclosure decree the lessee's covenant to make advances semi-annually of interest on a debt that has either become extinct or never passed to such purchaser?

409 But ahead of these difficulties there is presented the question whether the complainant can, under the mortgage to him or otherwise, assert any rights in or under said lease or is entitled to have its existence maintained and its provisions enforced for the benefit of the bondholders whom he represents. In other words, can that lease be brought within the description of the property, rights, and interests then existing or after acquired which were embraced in or covered by the mortgage executed to complainant?

These questions have been elaborately and most ingeniously argued by the distinguished counsel for complainant. It is not deemed necessary to review that argument in detail. It has been fully and carefully examined by the court in connection with the able briefs submitted on the part of counsel for defendants, and as the result of its investigation the court's conclusions are as follows, viz:

1st. That, said lease having been executed subsequent to the mortgage, no privity of estate or contract was thereby created between the mortgagee and lessee; and it is the well-settled rule both in this country and in England that inasmuch as no reversion vests in the mortgagee under such circumstances he cannot distrain or bring an action, either at law or in equity, for the rents payable by the tenant, nor is he entitled to enforce the covenants and provisions of the lease. He has no election either before or after the mortgagor's default to adopt and demand the benefits of the lease without the consent of the lessee. His remedy is to foreclose upon default of the mortgagor or to take possession of the premises and thereby place himself in position to obtain the future profit. Either step operates as an eviction of the tenant by title paramount and leaves him at liberty to terminate the lease and quit. See
410 Teal *v.* Walker, 111 U. S., p. 248, and cases cited; Thompson *v.* Somerville, 16 Barb., 469; Simens *v.* Salter, 3 Denio, 214; Lane *v.* King, 8 Wend., 584; Burr *v.* Stanton, 52 Barb., —; Auston *v.* Shearer, 61 N. Y., p. 6; Magill *v.* Hinedale, 6 Com., 469; Hilliard on Mortgages 207; Cook on Mortgages, 402; 1 Jones on Mortgages (3rd edition), sections 776, 777, & 778; Taylor on Landlord and Tenant, §§ 121–125; Rogers *v.* Humphreys, 4 Ad. & El., p. 690; Rowle on Covenants for Title (3rd ed.), 265; McKircher *v.* Hawley, 16 John., 289; Price *v.* Smith, 1 Green Ch., p. 516.

2nd. That under the facts of this case there has been no alterment, actual or constructive, nor any "equitable equivalent" therefor by the lessee to the mortgagee so as to change the above rule, and this court has no power to compel such an attornment by the lessee either to the mortgagee or the purchaser under the foreclosure proceedings. The relation of landlord and tenant as between the mortgagee and lessee can only arise by the mutual agreement and consent of the parties.

See authority above cited.

3rd. The lease in question does not come within the description of the property, rights, or franchises covered by the mortgage, nor is it in any sense "after-acquired property" within the meaning of these terms as used in *and in* said mortgage. Even if the income, rents, and profits of the road had been covered by the mortgage the personal covenant of the lessee to make "advances" as pro-
411 vided in the lease could not be treated as "income" of the road or as a part of the franchises of the mortgagor. The subject of "after-acquired property" under mortgages containing similar provisions and clauses has often been before the supreme court, but no case yet decided has gone to the extent of holding that personal contracts or covenants entered into with the mortgagor

or by third parties subsequent to the mortgage and under which no new estate is acquired by the mortgagor come with- those terms. See St. Paul & Duluth R'y Co. *v.* United States, 112 U. S., 733; 95 U. S., *pro.;* 104 U. S., p. 25; 2 Fleppin, 442.

4. But if the lease were otherwise free from obligation, if it was still in force as between lessor and lessee, and if it came within the description of the property, rights, and franchises covered by the mortgage, so that complainant had precisely the same right to claim the benefit of its provision which the mortgagor had (and certainly his rights could in no event rise higher than the mortgagor's), still this court would not compel the lessee to specifically perform the provisions of said lease or enforce the lessee's covenant to make advances beyond the net earnings of the demised road sufficient to pay the interest on the lessor's bonds and leave it to look alone to the future earnings of an insolvent road for its reimbursement, because the enforcement of that agreement would be grossly inequitable, unreasonable, hard, oppressive on the lessee, and without any equivalent consideration, past, present, or prospective, and because the lessor, to whose rights the complainant claims to have succeeded, is in default for large sums due the lessee and which the complainant makes no offer to pay.

412 5. The mortgagee, not being a party to or interested in or entitled to the benefits of said lease and the covenants therein contained, and the lessee having never attorned to him, was not a necessary party to the suit of Samuel Jeans *et als.*, in Jefferson common pleas, for the cancellation and annulment of said lease. The decree in that suit is conclusive on the parties to the lease, the lessor and lessee, and it is wholly immaterial whether it was instituted at their suggestion or not. The lessor and lessee could themselves have vacated and terminated said lease by mutual agreement at any time.

Other questions, such as fraud in procuring the execution and ratification of said lease and want of authority or power on the part of the lessee company to enter into any binding agreement to make advances from its own funds to the lessor to enable the lessor to meet the interest on its bonds, have been discussed by counsel, but their determination is not necessary in view of the conclusions which the court has reached on the foregoing points.

The case of the P., C. & St. L. R'y Co. *v.* The Columbus, Chicago & Indiana Central R'y Co., 8 Biss., p. 454, in which complainant's counsel relies with much confidence, does not, when carefully examined and analyzed, support the complainant's claim or conflict with the conclusions here reached.

The complainant being entitled to no relief in respect to said lease, his original and amended and supplemental bills as against the Pittsburgh, Cincinnati and St. Louis R'y Co., Samuel Jeans, and all defendants other than the Cincinnati & Muskingum Valley R'y Co. should be dismissed with costs, and it is accordingly so ordered and decreed.

413 The complainant being entitled to a decree of foreclosure and sale as against the mortgagor, the Cincinnati & Muskin-

gum Valley R'y Co., such a decree is accordingly ordered on the usual terms.

Nov. 24, 1887.

HOWELL E. JACKSON,
Circuit Judge.

And afterwards, to wit, on the 31st day of Dec., A. D. 1887, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

B., p. 123.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: That the equity of the case is with the defendants, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, The Trustees of Rumley Township, Harrison Co., Ohio; The Trustees of German Township, Harrison Co., Ohio; The Trustees of Steubenville Township, Jefferson Co., Ohio, and The City of Steubenville, Jefferson County, Ohio; that as against the above-named defendants or either of them the complainant is entitled to no relief whatever, and that as to them and each of them his original, amended, and supplemental bills should be absolutely dismissed with costs, but that the complainant is entitled
414 to a decree against the defendant The Cincinnati and Muskingum Valley Railway Company foreclosing its equity of redemption under the deed of trust or mortgage set out in the complainant's original bill herein and for the sale of the property specifically described in said deed of trust or mortgage as though the lease mentioned in the said bill of complaint had never been made or entered into, and such a decree is now accordingly ordered on the usual terms. Whereupon the complainant asked the court to postpone the formal entry of such decree of foreclosure and sale in his favor against said Cincinnati and Muskingum Valley Railway Company until after he shall have taken an appeal from the decree herein dismissing his said original, amended, and supplemental bills as against all the defendants except said Cincinnati and Muskingum Valley Railway Company and the cause upon such appeal shall have been heard and determined by the supreme court.

It is therefore further ordered, adjudged, and decreed that as against the defendants, The Pittsburgh, Cincinnati and St. Louis Railway Company, Samuel Jeans, The Trustees of Cadiz Township, Harrison Co., Ohio; The Trustees of Rumley Township, Harrison Co., Ohio; The Trustees of Steubenville Township, Jefferson Co., Ohio, and The City of Steubenville, Jefferson Co., Ohio, the said complainant's original, amended, and supplemental bills of complaint herein be, and the same are hereby, absolutely dismissed for want of equity, and that the complainant pay the costs which have herein accrued as to the above-named defendants within 60 days from this date, and in default thereof that execution issue for the same as upon udgment at law.

And it is further ordered, adjudged, and decreed that the
415 formal entry of the decree of foreclosure and sale in favor of the complainant as against the defendant The Cincinnati and Muskingum Valley Railway Co. be postponed until after he shall have taken an appeal from the foregoing decree dismissing his said original, amended, and supplemental bills as against the defendants except said Cincinnati and Muskingum Valley Railway Company and the cause upon such appeal shall have been heard and determined by the supreme court.

And at the same term and time comes now the complainant and prays an appeal from the decree of dismissal and for the recovery of costs against him aforesaid, which appeal is allowed, and the penalty of bond to be given for supersedeas is fixed at one thousand dollars.

416 And afterwards, to wit, on the 12th day of January, A. D. 1888, the following appeal bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States.

CHARLES MORAN
vs.
THE PITTSBURGH, CIN. AND ST. LOUIS R'Y CO. } 210.

Know all men by these presents that we, Charles Moran, M. S. Forbus, and Michael Ryan, are held and firmly bound unto The Pittsburgh, Cincinnati and St. Louis R. R. Co., Samuel Jeans, The Trustees of Cadiz Township, Harrison County, O.; The Trustees of Rumley Township, Harrison County, O.; The Trustees of German Township, Harrison Co., O.; The Trustees of Steubenville Township, Jefferson County, O., and The City of Steubenville in the sum of one thousand ($1,000) dollars, to be paid to the said The Pittsburgh, Cincinnati and St. Louis R'y Co. *et al.*, their heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this — day of January, 1888.

Whereas the above-named Charles Moran has taken an
417 appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named Charles Moran shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

M. FORBUS. [SEAL.]
MICHAEL RYAN. [SEAL.]

Sealed and delivered in presence of—
B. E. DILLEY.
GEO. C. WRIGHT.

The above security is approved.

GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, M. S. Forbus, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth one thousand dollars in real estate in my own name situate in the county of Hamilton, Ohio, in said district.

M. J. FORBUS.

418 Sworn to before me the 12th day of January, 1888.

B. E. DILLEY,
[SEAL.] *Deputy Clerk U. S. District Court, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Michael Ryan, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth one thousand dollars in real estate in my own name situate in the county of Hamilton, O., in said district.

MICHAEL RYAN.

Sworn to before me the 12th day of January, 1888.

B. E. DILLEY,
[SEAL.] *Deputy Clerk U. S. District Court, S. D. O.*

419 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Eastern Division, } *ss:*

I, R. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing transcript is a full, true, and correct copy of the proceedings had in the above-entitled cause as the same appears on file in said court.

In testimony whereof I have hereunto set my hand and the seal of said court, at the city of Cincinnati, Ohio, this 18th day of February, A. D. 1888.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

Endorsed on cover: S. Ohio C. C. U. S. No. 331. Charles Moran, appellant, *vs.* The Pittsburgh, Cincinnati & St. Louis Railway Company *et al.* Filed February 24, 1888.

Office Supreme Court U. S.
FILED.
OCT 13 1891
JAMES. H. McKENNEY.
CLERK.

In the Supreme Court of the United States,

OCTOBER TERM, 1891.

CHARLES MORAN,
Appellant,

vs.

THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY and others,
Defendants.

No. 37

Now comes George Hoadly, one of the solicitors for the appellant, who was the complainant in the Court below, and moves the Court that when this cause be reached upon the docket it may be passed without going to the foot of the docket, but to be called up for argument at any time during this Term, upon notice by either of the counsel to the others, as required by the rules of this Court, and, as reason for said motion, he submits a stipulation, signed by himself and by the solicitors for the several defendants, who appeared and answered in the case; also his own affidavit of reasons for the granting of said motion.

October 12th, 1891.

Respectfully submitted,

GEO. HOADLY,
Solicitor for Charles Moran, Appellant.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1891.

CHARLES MORAN,
Appellant.

vs.

THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI & MUSKINGUM VALLEY RAILWAY COMPANY and others,
Respondents.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The undersigned, solicitors for the several parties to this cause, respectfully request this Honorable Court to order, and, so far as we are concerned, consent and stipulate that the same shall be binding upon us, that said cause when reached upon the docket may be passed without going to the foot of the docket, but to be called up for argument at any time during this term, upon notice by either of us to the others, as required by the rules of the Court.

GEO. HOADLY,
Solicitor for Appellant.

RICHARD A. HARRISON & JOSEPH OLDS,
Solicitors for the Appellees other than said Railway Companies.

J. T. BROOKS,
Solicitor for P. C. & St. L. R. W. Co.

IN THE SUPREME COURT OF THE UNITED STATES, 7

OCTOBER TERM, 1891.

CHARLES MORAN,
Appellant,

vs.

THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY and others,
Defendants. 8

STATE OF NEW YORK, }
City and County of New York, } ss.:

GEORGE HOADLY, being duly sworn, says: that he is one of the solicitors for Charles Moran, appellant (complainant in the Court below), and that the reasons for asking that the cause be passed without continuance or placing at the foot of the docket are the following:

This is a suit in equity brought by Charles Moran, surviving trustee, to foreclose the first mortgage of the property and income of the Cincinnati and Muskingum Valley Railway Company, made to him and J. Edgar Thomson, as trustees (said Thomson having departed this life). The principal issue in the litigation grows out of the fact that, after the mortgage was made, the railway company leased its railway and property to the Pittsburgh, Cincinnati & St. Louis Railway Company, which was in possession as such lessee of said mortgaged railway at the time this suit was begun. The complainant insisted in the Court below that the lease constitutes a valuable addition to 9

10 the mortgaged property, and that he was at his election entitled to a decree for sale of the railway, with the benefits of the lease and subject to the obligations thereof, without dispossessing the lessee. The Circuit Court refused this portion of the relief sought by the bill and because of such refusal, the present appeal was taken to this Court. The refusal was in part based upon the proposition that by the judicial action hereinafter described, the lease had been cancelled and annulled, as between lessor and lessee, before the rendition of the decree from which the present appeal is taken. This cancellation had been effected by judgment of the Court of Common Pleas of Jefferson County, Ohio, in a suit brought
11 by Samuel Jeans and others, as minority stockholders of the Pittsburgh, Cincinnati and St. Louis Railway Company, claiming relief from said lease against the Pittsburgh, Cincinnati and St. Louis Railway Company and the Cincinnati and Muskingum Valley Railway Company, but to which Charles Moran, as trustee, was not made a party defendant.

Before the hearing of this cause in the Circuit Court of the United States, the said case of Jeans *vs.* the Pittsburgh, Cincinnati and St. Louis and the Cincinnati and Muskingum Valley Railway Companies had been tried, and decided in favor of the
12 complainants in the Court of Common Pleas of Jefferson County, Ohio. Thereupon, Evan J. Henry, a stockholder of the Cincinnati and Muskingum Valley Railway Company, for himself and others in like interest, claiming to enforce said lease, appeared at the judgment term, but after its rendition in the said Court of Common Pleas, and was allowed by order of said Court to file an answer and to appeal. He gave the necessary bond to perfect his appeal and the same was duly docketed in the Circuit Court of the State of Ohio for Jefferson County, which, according to the laws of the State

of Ohio, is an intermediate Court of Appeal, having 13
jurisdiction in the premises. By the laws of Ohio, the appeal of a cause properly perfected, suspends the judgment of the Common Pleas, and the cause so appealed, comes on for trial *de novo* upon the same pleadings, but with the same or other evidence as the parties may see fit to present the same, to such Circuit Court.

At the May term, 1886, of the Circuit Court, sitting in Jefferson County, and before the hearing of the present case, the appeal of Evan J. Henry from the judgment cancelling said lease, was upon motion of the said plaintiffs, Samuel Jeans and others, dismissed. From this dismissal, said Henry sued a petition in error in the Supreme Court of 14
Ohio, where the same was reversed at the January Term, 1890, (after the hearing of the present cause,) and the cause remanded to the Circuit Court for further proceedings. The opinion of the Supreme Court of Ohio upon such reversal is printed in the 47th volume of Ohio State Reports, at page 116.

The cause then coming on for further proceedings in the Circuit Court for Jefferson County, Ohio, another motion was made by said Samuel Jeans and others, to strike the answer of said Evan J. Henry from the files, as having been improperly filed in the Court of Common Pleas, which motion was granted by the Circuit Court. To reverse this order, 15
another petition in error was filed by the said Evan J. Henry, which came on to be heard at the January Term, 1891, of the Supreme Court of Ohio, when the said order was reversed and the cause again remanded to the Circuit Court for further proceedings.

The opinion upon this last petition in error will appear in the 48th Volume of the Ohio State Reports. As yet, it has only been published in the 25th volume of the Weekly Law Bulletin of Columbus & Cincin-

nati, Ohio, at page 430 (Number for June 22, 1891), to which reference is here had and made.

The next Term of the Circuit Court for Jefferson County at which the said case will regularly stand for trial between the parties will begin on the twenty-fourth day of November, 1891. It is expected that the cause will be tried at that Term, and inasmuch as the action of the Circuit Court in that case at that term may result in the dismissal of the petition, it is not thought necessary or wise meanwhile to discuss in this Court the question whether the omission to make Charles Moran a defendant to that cause would have the effect or not to relieve from the effect of a judgment cancelling said lease, which may now never be rendered, or whether the appeal perfected by said Henry has vacated or suspended said judgment, and thus avoided its effect upon the lease, and whether this fact may now be shown in this case.

Should the petition be dismissed, as is claimed by Evan J. Henry and his associate stockholders of the Cincinnati and Muskingum Valley Railway Company, then the lease will remain in full force, and the question presented in this cause will assume a different aspect from that which it presented when submitted to Judge Jackson at the hearing in the Circuit Court of the United States.

And further deponent saith not.

GEO. HOADLY.

Sworn to and subscribed before me, }
this second day of October, 1891. }

MARK J. KATZ,
Notary Public (125),
N. Y. Co.

Office Supreme Court U. S.
FILED.
OCT 9 1893
JAMES H. McKENNEY,
CLERK

Supreme

~~CIRCUIT~~ COURT OF THE UNITED STATES

~~SOUTHERN DISTRICT OF OHIO Eastern Division~~

CHARLES MORAN, ~~Complainant~~, Appellant.

versus

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, ~~THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY~~, SAMUEL JEANS, THE TRUSTEES OF CADIZ TOWNSHIP, RUMLEY TOWNSHIP AND GORMAN TOWNSHIP, IN HARRISON COUNTY, OHIO, THE TRUSTEES OF STEUBENVILLE TOWNSHIP, IN JEFFERSON COUNTY, OHIO, AND THE CITY OF STEUBENVILLE, OHIO, ~~Respondents~~ Appellees.

IN EQUITY. On Appeal.

Richard A. and Joseph

BRIEF OF HARRISON, OLDS ~~& MARSH~~ FOR ~~THE ABOVE NAMED PUBLIC CORPORATIONS AND SAMUEL JEANS~~. Appellees

OHIO STATE JOURNAL PRINT.

Supreme

~~CIRCUIT~~ COURT OF THE UNITED STATES

~~SOUTHERN DISTRICT OF OHIO—EASTERN Division.~~

CHARLES MORAN, ~~Complainant~~ Appellant,

versus

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, ~~THE CINCINNATI AND MUSKINGUM VALLEY RAILWAY COMPANY~~, SAMUEL JEANS, THE TRUSTEES OF CADIZ TOWNSHIP, RUMLEY TOWNSHIP AND GORMAN TOWNSHIP, IN HARRISON COUNTY, OHIO, THE TRUSTEES OF STEUBENVILLE TOWNSHIP, IN JEFFERSON COUNTY, OHIO, AND THE CITY OF STEUBENVILLE, OHIO, ~~Respondents~~. Appellees.

IN EQUITY. On Appeal.

BRIEF OF HARRISON, Richard A and Joseph OLDS & MARSH FOR ~~THE ABOVE NAMED PUBLIC CORPORATIONS AND SAMUEL JEANS~~. Appellees.

The opinion of Mr. Justice Jackson in the Circuit Court is reported in 3d Federal Reporter, 870. It contains a full statement of the case.

I.

The plaintiff never acquired a lien upon, nor an interest in, the lease set forth in the pleadings.

The lease was made for the term of ninety-nine years from the first of January, 1873.

The plaintiff *claims* a lien or interest in the lease under and by virtue of a mortgage executed by the lessor to J. Edgar Thomson and him, *as trustees* for the holders of the bonds which the mortgage was given to secure. The mortgage

debt will become payable thirty years from the first of January, 1871; *i. e.*, seventy-two years before the term for which the mortgagor undertook to make the lease will elapse. The interest on the mortgage debt is payable semi-annually from the first of January, 1871. The mortgage provides that the condition of defeasance shall be broken upon a failure to pay the interest or principal of the bonds at any time when either becomes payable; and that after ninety days from such default, the trustees, or their successors, may and *shall* enter and take possession of the mortgaged premises, and hold, use, manage and employ the same, making from time to time all needful repairs, alterations and additions thereto; and, after deducting all expenses of such use and management, repairs, alterations and additions, and a reasonable compensation to the trustees, apply the proceeds thereof to the payment, *pro rata*, of all principal and interest remaining due and unpaid on any of said bonds, and also shall, on written request of the holders of at least one-half the amount of the bonds secured by the mortgage, cause the mortgaged premises, or so much thereof as may be necessary to pay said principal and interest then due and unpaid, to be sold, after sixty days public notice, at public auction, in the city of Zanesville, Ohio, and execute to the purchaser a good and sufficient conveyance in fee simple for the property sold; "which deed," in the words of the mortgage, "shall be a bar against the mortgagor, its successors and assigns, and all persons claiming under them, of all right, title, interest or claim, in law or equity, in or to the premises sold; and out of the proceeds of such sale the trustees are required to pay all costs, charges and expenses of executing the trust, and then pay all the interest and principal then remaining due and unpaid on any of said bonds, and the residue, if any, restore to the mortgagor, its successors or assigns."

The mortgage was executed and delivered the first of September, 1870. It was duly recorded in a month or two afterwards.

The lease was not executed until December, 1872, more than two years after the delivery of the mortgage. The mortgagee was not a party to the lease.

It follows from these facts that no contractual obligations between the lessee and the mortgagee were entered into or created.

The mortgagor had a right to lease for a limited time; but it had no right to make a lease the term of which would extend beyond the time during which, by the terms of the mortgage, it had the right to possess the mortgaged property. The lessee had actual notice of the mortgage. Hence the lease was made subject to all the rights of the mortgagee, *unimpaired and unaffected*. The relation of the mortgagee to the mortgagor and the estate mortgaged, remained after the lease precisely as it was before. The mortgagee did not become bound by the lease, and, consequently, he did not acquire any interest in or lien upon it, by virtue of the mortgage. For the same reason he did not acquire any rights against the lessee, as lessee. It follows that the lessee did not become the tenant of the mortgagee, and did not acquire any rights against the mortgagee, nor incur any liabilities to the mortgagee. His interest under the lease depended for its *duration* upon the enforcement of the mortgage. If the lease had not been set aside and cancelled by the decree set out in the pleadings, it would have been valid and in force, if valid and in force at all, only so long as the mortgage remained unenforced. The tenant had only a contingent right to enjoy the mortgaged property. His right

to possession depended upon that of the lessor, and would necessarily cease with it, and the lease become void.

A mortgagee is not *legally or equitably* bound, in any way, to a lessee who takes a lease after a mortgage (*Keech* v. *Hall*, 1 Doug., 21); and with the enforcement of the mortgage, the leasehold interest is determined, even though the lessee be not made party to the foreclosure suit.

If the mortgagor makes default, the mortgagee may evict both the mortgagor and his lessee from the mortgaged premises, or he may foreclose the mortgage and cause the property to be sold under a decree of court, to satisfy the mortgage debt, as though the lease had never been made.

There is no privity of contract or of estate between the purchaser under the decree of sale and the tenant; and such purchaser takes the property free from any right or interest in the mortgagor or his tenant. The purchaser may, therefore, treat the tenant as an occupant without right, and maintain ejectment for the premises. *Neither of them is under any contract obligations to the other.* The tenant is not bound to become the tenant of the purchaser, if the latter offers to accept the former, nor is the latter bound to accept him as his tenant if he offers to become such.

The mortgagee is not bound by the lease, and cannot avail himself of it. He cannot avail himself of it, for the reason that he is not bound by it. As there is no privity of estate or of contract between him and the lessee, none of the covenants of the lease can be enforced against or by the mortgagee; and for the same reason (want of privity), the mortgagor does not become *assignee* of the lease.

It inevitably follows, that such a mortgagee cannot compel the lessee to become his tenant.

Where the lease is subsequent to the mortgage, it is well settled in this country, that no reversion vests in the mortgagee, and that no privity of estate or contract is created between him and the lessee. For that reason the mortgagee cannot proceed, either by distress or action, for the recovery of the rent.

Teal v. *Walker*, 111 U. S., 242, 248; *Mayo* v. *Shattuck*, 14 Pick., 533; *Watts* v. *Coffin*, 11 Johns., 495; *McKircher* v. *Hawley*, 16 *id.*, 289; *Sanderson* v. *Price*, 1 Zab., 637; *Price* v. *Smith*, 1 Green, Ch. (N. J.), 516; I Jones on Mortgages (3d ed.), §§ 776, 777, 778; Taylor on Landlord and Tenant, § 121.

In England the same rule prevails.

In *Rogers* v. *Humphreys*, 4 Ad. and El., 299–313, LORD DENMAN said:

"If there be a lease, and such lease is *prior* to the mortgage, the mortgagee has the same rights against the lessee, and those claiming under him, that the mortgagor had, and *no other* than he had, and his remedy must be *on the lease* as assignee of the reversion as long as the lease is in existence and the tenant acknowledges his title; but if the lease be *subsequent* to the mortgage, then the mortgagee may treat the lessee, and all those who may be in possession, as wrongdoers, and may bring an ejectment; *but he cannot distrain or bring any action for the rent they have contracted to pay, as there is no relation of landlord and tenant between them, unless they choose to pay the rent to the mortgagee and he accepts it;* in that case there is a relation of landlord and tenant created between the mortgagee and the tenants, and the remedy of the mortgagee will depend upon the particular circumstances of each case."

In *Partington* v. *Woodcock*, 6 Ad. and El., 690, LITTLEDALE, J., observed, that if the lease were made subsequently

to the mortgage, he saw no remedy the mortgagee could have against the tenant on non-payment of rent but to bring ejectment.

In *Wheeler* v. *Branscombe*, 5 Q. B., 373, it was held that payment of rent by mortgagor's tenant to the mortgagee, *under an authority from the mortgagor*, will not create the relation of landlord and tenant between the tenant and mortgagee. Hence, a lease made by a mortgagor subsequently to the mortgage, is *void as against the mortgagee*. If the mortgagee require the rent to be paid to him, and it is paid accordingly, the relation of landlord and tenant may arise between the parties, or at all events, the mortgagee may be entitled to sue the tenant for use and occupation. In *Pope* v. *Biggs*, 9 Barr. and Cress., 245, 251, *the court considered the mortgagee's demand to be equivalent to an eviction, of the tenant by* TITLE PARAMOUNT; so also *Doe d., Higinbotham* v. *Barton*, 11 Ad. and El., 307, *per* LORD DENMAN.

"There is," says Mr. RAWLE, Covenants for Title, 265, (3d. ed.) "an entire cessation of tenure between the tenant and the original landlord, and there is a creation of an entirely new *tenure* between the former and the mortgagee. *The mortgagee does not step into the shoes of the landlord*, and under no circumstances can there be a *continuation* of his rights." When, therefore, it was said, in *Pope* v. *Biggs*, (9 Barr. and Cress., 245), *per* BAYLEY, J., "the mortgagee, by giving notice to the tenant of the mortgagor, may thereby make him his tenant, and entitle himself to receive the rent." This, which was not necessary to the decision of the case, was properly denied in subsequent cases. *Evans* v. *Elliott*, 9 Ad. and El., 342; *Brown* v. *Storey*, 1 Scott's N. Rep., 9 S. C. 1 Man. and Gran., 117. *It is evident that the mortgagee has no legal power to compel the tenant to remain in possession*. Clearly, if the tenant, upon receiving the notice,

retire from the premises, no action could be maintained against him by the mortgagee for the rent accruing subsequently to the notice; while if the relation between the landlord and tenant pass, as such, to the mortgagee, the tenant would, notwithstanding he quit the possession, be liable for the rent until the expiration of his term. * * *

If a contrary doctrine to this prevailed, the situation of a tenant who originally derived his possession under a lease subsequent in date to a mortgage would be hard in the extreme; since, on the one hand, the mortgagee might threaten him with an ejectment and hold him liable for mesne profits, unless he consent to pay the rent to him; while, on the other, such payment would be no defense as against his original landlord when sued by him for the rent. It is true that the mortgagee cannot sue him for the rent, nor bring an action to recover it (*McKircher* v. *Hawley*, 16 Johns., 289; *Mayo* v. *Shattuck*, 14 Pick., 525), there being no privity between the tenant and himself; but he may obtain the same results indirectly by a threat of ejectment and an action for mesne profits. (See Mr. Hare's note to *Moss* v. *Gallimore* and Duchess of Kingston's case, 2 Smith's Lead. Cas.)

A permanent lease of lands under mortgage can only be secured by both the mortgagor and mortgagee joining in its execution. Mr. TAYLOR, in his work on Landlord and Tenant, shows that this necessarily results from the rules of law applicable to leases made subsequently to a mortgage. After stating these rules, he says, § 125:

"From the foregoing observations, it is obvious that *a permanent lease of lands under mortgage* can only be secured by the concurrence of both the mortgagor and mortgagee, the

former to *demise and lease*, the latter to *ratify and confirm*. Such a lease operates during the continuance of the mortgage as the demise of the one and the confirmation of the other; but, after the mortgage is paid off, as the demise of the latter and confirmation of the former. Where both concur in the grant, the covenants on the lessee's part should be entered into with the mortgagee, with a view to their running with the land. If entered into with the *mortgagor*, they are merely covenants in gross, and of no value to an assignee of the mortgage."

A mortgagee, by giving notice to a tenant holding under a lease made by the mortgagor only after the execution of the mortgage, to pay his rent to him (the mortgagee), and not to the mortgagor, did not entitle himself to distrain as for rent accruing under the lease, such notice not constituting the relation of landlord and tenant between the mortgagee and lessee.

Evans v. *Elliott*, 9 Adol. & Ell., 342; S. C. 1 Per. & Dav., 256.

In this case the naked point was presented to the court, and they were unanimously of opinion that, by the mere fact of notice that the mortgage money remained unpaid, the mortgagee could not forthwith cause the tenant to hold of him.

And it has also been lately held that *payment of rent* by a mortgagor's tenant to the mortgagee, under an authority from the mortgagor, will not create the relation of landlord and tenant between the tenant and the mortgagee.

Wheeler v. *Branscombe*, 5 Q. B., 373; S. C. 1 Dav. & Meriv., 406.

Any contract which may be made by a mortgagor cannot be set up by the mortgagee, or a purchaser at a foreclosure sale, against the person contracting with the mortgagor, any more than it could be set up by such contractor against the mortgagee or the purchaser at such sale.

Thompson v. *Somerville*, 16 Barb., 469.

None of the covenants of the lessor contained in the lease are obligatory upon the plaintiff; nor will any of them become obligatory on the purchaser of the mortgaged property upon foreclosure and sale; and the mortgagor will be, by such sale, discharged from the performance of such covenants, and the lessee will be discharged concurrently from the performance of the covenants which it covenanted to perform on its part. Authorities above cited, and also the following cases:

Fitzgerald v. *Beebe*, 7 Ark., 310;
Simons v. *Salters*, 3 Denio, 214;
Whalin v. *White*, 25 N. Y., 426;
Cowley v. *Cart*, 44 N. Y., 382;
Burr v. *Stenton*, 52 Barb., 377;
Gartside v. *Outley*, 58 Ill., 210.

A lease, made after the date of the mortgage, is ineffective against the mortgagee, and the mortgagee may evict the lessee by ejectment, without notice to quit.

Keach v. *Hall*, Douglass, 21;
Thunder v. *Belch*, 3 East, 449;
1 Hilliard's Abrid., 279;
1 Powell, Mort., 159, 160, 161.

This principle is inseparable from the nature of the mortgage security. If a subsequent lease were not subject to the mortgage, it would put an end to the mortgage lien. Did

not the interest of the lessee determine and cease on foreclosure or ejectment by the mortgagee, the mortgagor might effectually destroy the mortgage by a lease for many years. For, if the mortgagor could make a lease which should extend beyond the foreclosure and sale under the mortgage, he might, as in the case at bar, grant a term for ninety-nine years, or for centuries. In order to bind the mortgagee, it is essential that he join in the execution of the lease. By so doing, the covenants and grants of the lease become mutually obligatory upon the mortgagee and the lessee.

The relations and rights and liabilities of the parties are essentially different when a mortgagor in possession makes a lease for years upon the mortgaged property subsequently to the execution of his mortgage and when he makes a lease previously to a mortgage on the demised property.

The mere execution of a mortgage subsequent to the lease operates to create a *legal privity* between the mortgagee and lessee; it operates as *an assignment of the reversion*, and carries the rent as incident to it; and so the mortgagee is entitled, upon notice to the tenant, to receive the rents whenever he is entitled to possession. A mortgage of property already leased is an assignment of the reversion, and therefore the mortgagee becomes entitled to the rent as *assignee of the reversion*. Hence, the relation of landlord and tenant exists between the mortgagee and tenant from the time the mortgage takes effect. (1 Jones, Mort., § 774.) As purchaser of the reversionary title of the landlord, he acquires a legal right to the reserved and subsequently accruing rent, as an incident to the reversion; and it has often been decided that, in this respect, a mortgagee of the legal title to a reversion is entitled to the same incidental and resulting rights as any other purchaser of the same interest.

But the execution of a lease subsequently to the mortgage does not create any legal privity between the lessee and mortgagee. The antecedent mortgage is a conveyance of the mortgaged *property;* not an assignment of the mortgagor's *reversion*. The relation of landlord and tenant is not created, when the lease is made after the mortgage. The mortgagee does not become the assignee of the landlord, either before or after a default of the mortgagor. Therefore, the lessee does not become, upon the execution of the lease, or at any time afterwards, the tenant of the mortgagee. The mortgagee cannot recover r nt from him. On the contrary, the mortgagee may evict him. Upon the termination of the mortgagor's right to possession, the *tenant* of the mortgagor *may quit the possession*. When the mortgagor's rights cease, the lease is dissolved, and both parties thereto are released from the obligations thereof. The lease cannot co-exist with and survive the entry of the mortgagee for condition broken, or a foreclosure and judicial sale of the property to the mortgagee, or to a stranger, under the mortgage. A sale of the property to the mortgagee, or to a stranger, will destroy the lessee's estate.

When the owner of real property, which has been already leased, gives a mortgage of it, the mortgage is, of course, a mortgage merely of the reversion, and the rent passes as incident to the reversion, (the rule being that in general rent is incident to, and passes with, the reversion); and the mortgagor is estopped by his own deed to claim the rent afterwards, and the mortgagee, by force of the possession taken, may maintain an action for the same.

Souders v. *Vansickle*, 3 Halst., 314;
Manony v. *U. S., &c.*, 4 Ala. (N. S.) 746, 748;
Rawson v. *Eicks*, 7 Ad. & El., 451.

But, in this case, as in *Souders* v. *Vansickle*, (*supra*), the mortgage being made first, the lessee of the mortgagor was never tenant to the mortgagee, and must be regarded and treated as a stranger; and the mortgagee can maintain no claim under the lease. *Souders* v. *Vansickle* was as follows:

A mortgagor in possession having conveyed the land, the grantee admitted a third person as his tenant. Afterwards the grantee's interest was sold on execution. Immediately upon the sale and before any deed was given, the tenant attorned to the execution purchaser, and agreed to occupy at a certain rent. The mortgagee afterwards notified the tenant to pay rent to him, and the tenant, receiving an indemnity, did so. The execution purchaser then brought this action against the tenant for the rent. The court held, that where the mortgage is subsequent to the lease, the rent passes as incident to the reversion which is mortgaged, and the mortgagor is estopped by his own deed to claim it afterward. But that, in this case, the mortgage being made first, the defendant was never tenant to the mortgagee, nor even to the mortgagor. The court further remarked, that by a statutory provision of the State, a tenant shall not attorn to *a stranger*. Therefore the tenant could lawfully attorn only to the grantee or a purchaser from him, and the execution purchaser stood in the same position as one taking a direct conveyance, while the mortgagee was to be regarded as *a stranger*. And that although mortgagees are excepted from the general statutory provision against attornment, the effect of this exception is merely to render attornment valid or invalid, according to the circumstances of each case, but not to authorize attornment to any one but the landlord's grantee.

In *McKircher* v. *Hawley*, 16 John., 289 (above cited), where a lease was made subsequently to the mortgage, it was

claimed that the mortgagee has an election, either to proceed against the tenant as a trespasser, or to affirm the lease, and proceed, either by an action or by distress, to recover the rent.

But the court held otherwise. SPENCER, C. J., speaking for the court, said: "WOODFALL, in his treatise on the law of landlord and tenant (194, 286), lays down the position sanctioned by the case of *Moss* v. *Gallimore*, and constantly marks the distinction by confirming the right of the mortgagee to distrain, where the lease was given anterior to the mortgage. It appears to be an established principle, that a person who has not the reversion, can not distrain of common right.

"The mortgagor holds, it is true, upon an implied consent and agreement, existing between him and the mortgagee, and, according to the decisions of this court, is, on that principle, entitled to notice to quit before he can be proceeded against as a tresspasser, but it would be going too far, to say that he might make leases, which the mortgagee might or might not affirm, at his election. The relation between them does not imply a right on the part of the mortgagor to lease."

In *Price* v. *Smith*, 1 Green's Ch., 516, the point decided was:

"Where a lease is made by the mortgagor subsequent to the mortgage, the mortgagee is not entitled to an account in equity against the tenant for the rents."

The ruling is put upon the ground that there is no privity of contract or estate between the tenant and the mortgagee.

In *Jones* v. *Thomas*, 8 Blackf., 428, it was held, that "if land mortgaged be sold under a decree of foreclosure, etc., the purchaser will be entitled to the crops growing at the time of the sale, in preference to a person claiming under the

mortgage and whose claims originated subsequently to the mortgage." The person so claiming was a lessee for years.

The court say: "It appears that the plaintiffs purchased their term under a judgment subsequent to the mortgage of Powell, and their lease to Thomas was also necessarily subsequent to the mortgages. The only question then is, who was entitled to the growing crops on the foreclosure and sale of the mortgaged premises? The principles of law on which this question must be decided are well established.

"The plaintiffs, at the sale under execution, purchased Bennett's equity of redemption, and acquired, for their term, such rights and privileges as he had and no other. They may, therefore, be regarded as mortgagors in possession, and as such entitled, while remaining in possession, to receive the rents and profits without any accountability to the mortgagee. But they could not make a valid lease to bind the latter. 2 Cruise's Dig., 108. They were but tenants themselves, under that peculiar relation which subsists between mortgagors and mortgagees. A mortgagor is not entitled to emblements as tenants at will are. 4 Kent's Com., 156. A mortgagee may evict the mortgagor without notice and retain the emblements, and if a lease be granted subsequently to the mortgage without his concurrence, he may evict the lessee without notice and retain the emblements. Coote on Mort., 351; 2 Swift's Dig., 156; 2 Cruise's Dig., 108. The reason of this was said by the old writers to be, that the lessee was evicted by a title paramount, and the lease of the mortgagor amounted to a disseizin of the mortgagee which rendered the lessee upon entry a wrong-doer. But a sufficient and better reason appears to be, that every person who takes under a mortgagor takes subject to all the rights of the mortgagee, unimpaired and unaffected. 4 Kent's Com., 157; 16 Johns. R., 292; 18 *id.*, 487; 6 Cow., 147. When, therefore,

a mortgagee obtains the absolute estate in fee of the mortgaged premises, by becoming the purchaser under a foreclosure and sale, he is entitled to the emblements, and may maintain trespass against the mortgagor or his lessee for taking and carrying away the crops growing at the time of the sale: *Lane* v. *King*, 8 Wend., 584; the title and interest of the mortgagor or his lessee, being subject to and liable to be divested by a foreclosure and sale of the mortgaged premises. *Shepard* v. *Philbrick*, 2 Denio, 174."

The court further said: "We are aware that in *Cassily* v. *Rhodes*, 12 Ohio R., 88, the Supreme Court of Ohio has taken a different view of the law applicable to this case. It may sometimes operate harshly on the interests of tenants and lessees, but this is a consideration which should be referred to the Legislature. It is our business to apply the law as we find it, and with the exception of the Ohio case, all the authorities we have seen are decidedly against the plaintiff."

In *Cassily* v. *Rhodes*, the ruling, referred to in the above case, was put on two grounds: (1) That, according to the statute of Ohio, when property is sold at judicial sale it must be appraised and cannot be sold at less than two-thirds of the appraised value; and the value of the annual crops is not included in the estimate. (2) That a mortgagor may lawfully lease, subject to the mortgage; and when the mortgagee defeats the estate, either by entry or judicial sale, the annual crops are saved for the tenant, under the common rule relating to emblements, *because the termination of the lease is uncertain*. The court remarked, the elder jurists find abundant reason for the doctrine, in the protection the law owes to agriculture. Co. Lit., 55; 4 Kent's Com., 73. And we may enlarge the basis by referring to our system of

appraisals; that where property is valued for judicial sale, as the statutes of this State require, the value of the annual crops is not included in the estimate; yet, if the crops passed, the purchaser would acquire property which had not been subjected to appraisal; and thus defeat the system of policy intended for the debtor's protection. The debtor's rights, therefore, can be saved only by regarding the annual crops as personalty, requiring a separate levy.

In *Lane* v. *King*, 8 Wend., 584, it was *held:*

A mortgagee, as against the mortgagor and his grantees, has the paramount right; and, therefore, a lessee of the mortgagor, under a lease executed subsequently to the mortgage, is not entitled, as against the mortgagee, to crops growing on the mortgaged premises at the time of the foreclosure and sale of said premises; and the mortgagee becoming the purchaser, may maintain trespass against the lessee for taking and carrying away the crops.

The same doctrine is stated in Taylor on Landlord and Tenant, § 537.

In *Austin* v. *Shearne et al.*, 61 N. Y., 6, DWIGHT, C., delivering the opinion of the Commission of Appeal, says (p. 18): "It is conceded on all hands that such a lease [*i. e.*, a lease made by the mortgagor subsequent to the mortgage] is in no privity with the mortgagee. [In the report mortgagor is, by a manifest misprint, printed instead of mortgagee]. He may, in the absence of statutory provisions, be treated by the mortgagee as a tresspasser. So, on the other hand, *the mortgagee cannot require him to pay rent.* These propositions are elementary law. Let an attornment take place, let the mortgagee threaten eviction, and let the tenant attorn to him, there springs up at once between the parties

the relation of landlord and tenant. If the attornment be unqualified, it puts the tenant in the same relation to the mortgagee which he held to the mortgagor."

In *Simers* v. *Salters*, 3 Denio, 214, it was *held:*

The interest of a tenant under a demise from a mortgagor, made after the execution of a mortgage, is extinguished by a foreclosure and sale.

And though the tenant be not evicted, if he attorn to the purchaser, the right of the lessor to the future rents is extinguished.

So if the tenant, on being requested by the purchaser to attorn, yield up the possession of the premises, it is equivalent to an actual eviction of the tenant, and will enable him to defend an action brought by the lessor for rent accruing subsequently.

And although the lessor assign the lease to the purchaser and consent that the rent for the residue of the term be paid to him, the tenant may, notwithstanding, go out of possession and refuse to pay the subsequent rents

JEWETT, J., pronouncing the opinion of the court, said:

"I entertain no doubt but that the foreclosure of the mortgage and the sale and conveyance of the demised premises, under the decree, extinguished the title of the plaintiff, and also the right of the tenant under his lease. (*Kershaw* v. *Thompson*, 4 Johns., Ch. Rep. 609.) * * *

"After foreclosure and sale of the mortgaged premises, in possession of a lessee of a mortgagor, under a lease subsequent to the mortgage, the lessee is considered a wrong-doer, and is not entitled to notice to quit; and against him an action of trespass will lie by the purchaser for taking and carrying away the crops. (*Lane* v. *King*, 8 Wend., 584.)

"After Gleason acquired title by the execution of the master's deed, he could have sustained an action of ejectment

against Shine unless he attorned to him with his assent, or immediately abandoned the possession of the premises; and after a recovery Gleason might have recovered of Shine the value of the accruing rents as mesne profits from the day his title became vested. Unless the law allows a tenant, thus circumstanced, to abandon his possession, and to defend himself against an action by his lessor for the subsequent rent, without showing actual eviction, he must be exposed to the expense, loss and vexation which necessarily follow an action of ejectment or other proceedings to recover the possession of the premises.

"It is argued that he could avoid this by an attornment to the purchaser. But this could not be done unless the purchaser would accept it, and he might not consent. *And besides, the tenant might have a choice in his landlord, and be unwilling to become the tenant to the purchaser. Should he be compelled? I think not.* Eviction by title paramount is a good plea to an action for rent accruing after such eviction, and I think the defense here bears a strong resemblance to such plea. What has been done under the mortgage executed by the plaintiff in this case is, in my opinion, in the nature of and equivalent to an eviction by title paramount."

"By a sale of mortgaged premises under a judgment of foreclosure, the estates of the owner of the equity of redemption and of his lessee for years, are absolutely barred and extinguished. The lessor's title being cut off by the foreclosure, *the lease executed by him becomes void*; and the estate of the lessee does not survive the contract by which it was created. If there is a surplus arising from the sale, the tenant is *not* entitled to any part of it."

Burr v. *Stenton*, 52 Barb., 377.

When a mortgagor leases mortgaged premises, a foreclosure and sale extinguish the lessee's title. And though the lessor assign the lease to the purchaser and consent that the rent be paid him for the rest of the term, the tenant may still quit and refuse to pay the subsequent rents. *Simers* v. *Salters*, 3 Denio, 214; *Jones* v. *Clark*, 20 Johns., 121; *Magill* v. *Hinsdale*, 6 Conn., 469; *Castleman* v. *Belt*, 2 B. Monroe, 157; Hilliard on Mort., 207. Mr. Coote says (Mortgages, 402): "A new tenancy may be created between the mortgagee and tenant by payment and acceptance of rent, as rent, or even by the acquiescence of the tenant in the notice to pay the mortgagee, which will, it seems, be a tenancy from year to year upon the terms of the lease, although mere notice by the mortgagee to pay the rents to him without attornment or assent on the part of the tenant, is insufficient to create a new tenancy. It seems such notice may be treated as an eviction."

The foregoing principles of law are, we submit, decisive against the right of the plaintiff to the remedy he asks the court to administer in this case.

II.

In order, if possible, to avoid the effect of these established principles upon this case, an attempt is made by plaintiff's counsel to extend the mortgage to what it does not, and was not intended to, reach; and to base a right to a decree of specific performance of the lease on the part of the lessee, in favor of the plaintiff. But instead of the terms and provisions of the mortgage furnishing any legal basis or sustenance for such a claim, they plainly and absolutely forbid and preclude it. This can be easily demonstrated.

If the parties to the mortgage had intended that the mortgagor should have the right to exercise the extraordinary power now contended for, the provisions of the mortgage would have been very different and the power to make a permanent lease would have been expressly conferred upon it.

In respect to the terms of the grant, it conveys a fee simple to the mortgagees, as trustees, which is made defeasible only by the performance of the condition. The mortgage then provides, among other things, that after default in the payment of any part of the interest, or in default of the payment of the principal, for the space of ninety days, the trustees, at the request of one-third in amount of the bondholders, may and *shall* enter into and take possession of all or any of the mortgaged property, and hold, use, manage and employ the same, making all needful repairs, alterations and additions thereto, and applying the net income towards the payment of the mortgage indebtedness. The mortgage likewise contains a power of sale, to be exercised by the trustees, at the request of one-half in amount of the bondholders, after either of the defaults above mentioned; and the trustees are empowered to execute a good and sufficient deed of conveyance in fee simple to the purchaser, for the property so sold by them.

Now, it is obvious that the lease is utterly repugnant to the grant and condition of the mortgage, and also to each of the above recited provisions as to the trustees' right and duty to enter upon, possess, manage and use the mortgaged property, as well as their right and duty to sell and convey it. The lease, if valid and operative as made, carves out of *the estate mortgaged* an estate for ninety-nine years. It also prevents the trustees from entering and taking possession of the property, as the mortgage provides they shall do, and of employing it for the purposes therein expressed. It also

prevents the sale and conveyance of the property, or any part of it, by the trustees, in payment of the interest or principal of the mortgage bonds, according to the provisions of the mortgage. In the event of the payment of the interest, the lease prevents the exercise of the power of sale in order to pay the principal, which, as before stated, will be payable seventy years prior to the expiration of the lessee's term.

Keeping in view the terms of the grant, which conveys an estate in fee simple, and which is made defeasible only by the performance of the condition, let us suppose that a provision had been inserted in the mortgage after the granting clause, *in terms* purporting to give the mortgagor a right, at its pleasure, to create an estate for any number of years, without regard to the condition in the mortgage; so that the mortgagor might grant for years what it had already granted to the mortgagee in fee simple. Such a provision would have been repugnant *in terms* to the grant in fee simple. It would therefore have been void.

Haven v. *Adams*, 4 Allen, 80, and authorities there cited.

In that case, a railroad company executed a mortgage of real estate to trustees to secure the payment, principal and interest, of its bonds, to the amount of $350,000. It contained a provision authorizing the trustees, in case of default, to enter upon and use the premises and apply the proceeds *pro rata* to the payment of the sums in arrear; or, under certain circumstances, as therein expressed, to cause the premises to be sold. The mortgage also contained the following provision:

"And it is further mutually agreed, that until breach of condition of the aforesaid mortgage, the party of the first part, their successors and assigns, shall remain in undisturbed possession and occupation of the premises hereby

conveyed; and nothing herein contained shall be so construed as to prevent said corporation from improving said real estate or making leases of such parts thereof as they may desire and have opportunity to make."

It was *held*, that under this provision *the validity of leases* executed by the mortgagors subsequently to the execution of the mortgage, and their *authority to execute leases*, terminated upon breach of the condition of the mortgage, and that the trustees could not by an oral assent confirm leases so as to give them validity thereafter. "For the right of the lessee," says the court, page 91, "cannot co-exist with the right of the mortgagee to enter, foreclose and sell."

Now, the position of opposing counsel is, that the legal effect of the clause as to after-acquired property, is in legal effect the same as a clause in the mortgage authorizing the mortgagor to grant for years what it had already granted in fee simple, would have been. Surely what could not have been expressly done cannot be done by implication. A construction cannot be given to any clause in the mortgage which will impair or defeat the grant and the exercise of the powers and duties of the trustees which are necessary to carry it into effect. On the contrary, the ancillary clauses of the mortgage will be so construed as not to conflict with the grant, or the provisions as to right of entry and power of sale, which are cardinal and controlling, being essential to secure to the *cestius que trustent* the enjoyment of *the estate granted*.

Again: Inasmuch as the grant in this case is of the whole fee, the mortgagee has no right upon foreclosure, to sell only part of the estate mortgaged. We have seen that if a lease be made *prior* to a mortgage, the *estate mortgaged* is differ-

ent from the estate mortgaged when the lease is made *after* the mortgage. In the first case the estate mortgaged is only the *reversion* of the mortgagor; in the latter case the estate mortgaged is the *whole fee*. If a mortgagee in the latter case has the right to sell only a part of the *estate* mortgaged, he can not only divide it into two separate estates, but into as many as he chooses to carve out of it. Suppose that after the execution of the mortgage the mortgagor grants to A a lease for ten years, then to B an estate for life; could the mortgagee, on foreclosure, etc., sell, in the first place, only the remaining estate of the mortgagor; and if that should not be sufficient, then the life estate of B, and then the estate for years of A? On the contrary, must he not, by a single proceeding to foreclose, etc., sell the whole estate mortgaged? Under the statutes of Ohio, the mortgaged *premises* must be sold, and the mortgaged *property* must be appraised. Here the complainant seeks to have appraised and sold, not the premises or property mortgaged, namely, the whole of the fee in the property described in the mortgage, but only what he denominates the mortgagor's reversion, subject to an estate of ninety-nine years, which the mortgagor undertook to carve out of the estate mortgaged. This point will be hereafter more fully presented, and I pass it for the present.

III.

The mortgagee in this case is not the *assignee* of a reversion, nor of the covenants of the mortgagor's lessee. There is no privity between him and the lessee. It follows therefore that he cannot, at his pleasure, "adopt the lease," as opposing counsel suggest he may do. He cannot create the relation of landlord and tenant, nor any other relation, between himself and the lessee, without the assent of the

lessee. "It takes two to make a bargain." Our position in this regard is not founded upon the doctrine of the common law, that a chose in action was not assignable, and therefore the assignee of a reversion could not maintain an action upon a covenant contained in a lease, against the lessee, though the covenant might run with the land. But it is based upon the established rule of law that unless a mortgagee, whose mortgage is made before a lease, becomes *assignee* of the covenants of the lessee, there is no privity between the mortgagee and lessee, and, consequently, both are equally free from any contract obligations to each other. The mortgagee cannot "adopt" the lessee as his tenant without the concurrence of the lessee. In other words, the lessee is not bound to become the tenant of the mortgagee, if the latter offers to accept him as such; nor is the mortgagee bound to accept the lessee as his tenant, if the latter offers to become such. The mortgagee may prefer to have the possession, upon the mortgagor's default, or the lessee may prefer to surrender it. Where the mortgagee does not take possession after the mortgagor's default, but proceeds to foreclose and sell, he may do so without making the lessee a party, and the purchaser at such sale may treat the tenant as an occupant without right, and maintain ejectment for the property. And this he may do because there is no privity of contract or of estate between him and the lessee. As no privity existed between the mortgagee and the lessee, none arises under the decree and sale between the lessee and the purchaser. Where a lease is made *before* the mortgage, there *is* privity between the lessee and the mortgagee; so that, upon foreclosure and sale the purchaser stands in the same relation to the lessee as the mortgagee stood towards him prior to the sale. As the reversion of the mortgagee passes to the purchaser, by virtue of the sale, and the rent is incident to the

reversion, he becomes entitled to all rent which accrues subsequently to his purchase of the reversion. Under the Ohio system of appraisals, when a sale is ordered, under a mortgage, of property which was leased prior to its being mortgaged, and the term has not expired at the time of the sale, *the property* is appraised and sold irrespectively of the lease; and inasmuch as the purchaser, as successor in interest of the mortgagee of the reversion, becomes entitled to rents which accrue subsequently to the sale, he can afford to pay the amount at which it must be sold under the appraisement. But where the lease is made *after* a mortgage of the fee, *the fee*, upon foreclosure and sale under the mortgage, passes to the purchaser. The right to rent, under the lease, does not pass to him, because he does not purchase the reversion, and as incident thereto, the rents, but he purchases the fee; and upon such sale the lease is dissolved and terminates. The purchaser in such case can afford to buy under the appraisement, because he gets the property appraised in fee simple, and the instant he becomes the absolute owner in fee, the lease becomes void.

IV.

That *the covenants of the lessee were not mortgaged*, is self-evident. The lease had not been made when the mortgage was executed, and the lessee's covenants are not embraced in the clause as to property which may be subsequently acquired by the mortgagor. In order to come within the operation of that clause, when read in connection with the granting clause and the other provisions of this mortgage, the mortgagor must acquire a title to property other than that which the mortgagor owned when the mortgage was made, and which is specifically described and granted in fee simple

in and by the mortgage. That clause embraces only such property as is an accession or addition to the property which is specifically described and granted to the mortgagee. Rent which a stranger may covenant to pay to the mortgagor in a lease made by him for the term of ninety-nine years, subsequently to the mortgage, of the very property so specifically described and granted in fee simple to the mortgagee, is not an addition or accession to the mortgaged property. On the contrary, it is a covenant by the lessee to pay money to the mortgagor in consideration of a grant to the lessee of an estate for ninety-nine years in property which had been already granted to the mortgagee in fee simple. *The notion is absurd*, that a covenant to pay rent to a mortgagor in consideration of a grant by him of a permanent estate for years in property which he had previously granted in fee simple to his creditor as security for his debt, becomes a part of the property mortgaged, under such a clause in the mortgage. Such a notion assumes that such a clause has the effect of authorizing a mortgagor to carve out of the estate in fee which he has granted to the mortgagee, a permanent leasehold estate, and grant it to a stranger. By such a lease the mortgagor illegally undertakes to demise to a third person property which he has already granted to the mortgagee, instead of his acquiring a title to other property than that mortgaged.

V.

But it is said by the adverse counsel that "if a railway company mortgages its existing franchises, among which is the power to demise its property, it thereby mortgages the leasehold when carved out of its fee simple, and consummated by the delivery of possession to the lessee, with the reservation of covenants on his part to pay rent."

How can a railway company hold and use its property after it has granted to another its franchises? But in this case the railway company mortgaged *its property in fee simple* as well as its franchises. Hence it had no right or power, after the mortgage took effect, to carve out of the fee simple estate which it had mortgaged, a leasehold estate for ninety-nine years. It did not, after making the mortgage, possess the franchise to demise the property mortgaged beyond the time it had the right itself to occupy and enjoy the property, according to the terms of the mortgage. Whilst it had the right to demise the property *during that time*, a demise beyond that time was *void*. By making the mortgage, it deprived itself of the right to make a lease for any longer term than that. It could not, in the exercise of the franchise to lease, demise an estate for ninety-nine years which it had already granted in fee simple and had authorized the grantees to take possession of and use, and to sell and convey in fee simple. Therefore *the leasehold* which the mortgagor undertook to create *was not mortgaged*. The mortgagor having no power to create a leasehold estate for any longer term than during its right to possess and use the mortgaged property, and receive the profits to his own use, according to the terms of the mortgage, the lease was void, at least as to that part of the term during which the lessor had not the right of possession.

The doctrine announced by Chief Justice Perley, in *Pierce* v. *Emery*, 32 N. H., 484, which opposing counsel quote and emphasize by printing it in italics, does not sustain their contention. "The right," says the Chief Justice, "to take and hold property being one of the franchises mortgaged, the corporation has no power to take or hold property except by virtue of that franchise and under the mortgage by which

the franchise was covered." Now, this doctrine surely does not authorize a railway company to demise, for ninety-nine years, property which it has already granted in fee simple by deed of mortgage, and especially where, as in this case, the deed is made to trustees of the holders of the bonds thereby secured, and expressly authorizes and *requires* the trustees, after default in the payment of interest or principal of the bonds, to enter upon and employ the property granted for the benefit of their *cestius que trustent*, and also to sell and convey it, or any part of it, to pay overdue interest or principal. The doctrine of Chief Justice Perley is really fatal to the position of the adverse counsel. For it a mortgagor cannot take or hold any property except in the exercise of the franchise to take property *under the mortgage by which the franchise was covered*, then he cannot take or hold a covenant from a stranger to become his tenant for ninety-nine years in consideration of a grant of an estate for ninety-nine years in the property which the mortgagor had previously granted to the mortgagee.

In *Eldridge* v. *Smith*, 34 Vermont, 485, it was *held*, that the mortgage by a railroad company of its road and appurtenances, and its franchise, as a security for debt, does not convey its corporate existence or its general corporate powers, but only the franchise necessary to make the conveyance productive and beneficial to the grantees, to maintain and manage the railroad, and receive the tolls and profits thereof for their own benefit.

In *Ellis* v. *Boston, Hartford & Erie R. R. Co.*, 107 Mass., 1, it was *held*, that a contract made by a railway company subsequently to a mortgage is not binding upon the mortgagees, or upon receivers of the road, who are appointed in their behalf, although the contract relates to the carrying of freight in payment of a loan made to the company. See p. 17.

And in *Newport and Cincinnati Bridge Co.* v. *Douglas*, 12 Bush, 673, it was *held*, that a contract between a railway company and a bridge company, made subsequent to the mortgage, whereby the former company *guaranteed* that the tolls of the latter company for the use of its bridge across the Ohio river should amount annually to a certain sum, does not affect the rights of the mortgagee, and the bridge company cannot require that the order of sale shall provide that the purchaser shall carry out the terms of this contract.

The court said: "The Newport and Cincinnati Bridge Company insists upon certain questions not presented by the other appellants. The defendant corporation contracted with that company for the use of its bridge across the Ohio river between the cities of Cincinnati and Newport. This contract fixes the rate of tolls to be paid for the various classes of cars, freight, etc., and stipulates that the defendant corporation and the P., C. & St. L. R'y Co. shall guarantee that these tolls shall amount annually to a sum not less than $75,000. By its own terms this contract was to be perpetual. The bridge company and the other guarantor complain because the judgment of sale does not provide that the purchaser of the mortgaged roads shall be required to carry out and execute the terms of this contract. The liens of all the mortgagees, except Douglas and Lees, are elder, and therefore superior to any claim that can be asserted by the bridge company, and these elder incumbrances are in nowise bound or compromised by an arrangement that must, *ex necessitate*, terminate when their debtor loses the power to control and operate its roads. *The mortgagee coming in by superior title takes the subject of the mortgage clear of all obligations contracted by the mortgagor, whether personal to himself or relating to his management of the property. Ellis* v. *Boston, etc., R. R. Co.*, 107 Mass., 1." In that case coun-

sel claimed in argument that the contract of guaranty was an "appurtenance" of the railroad and covered by the mortgage. The adverse counsel in the case at bar make a like claim.

Telegraph Company v. *Telegraph Company*, 7 Bissell, 367, is cited by opposing counsel. But instead of supporting the proposition which it is cited to support, it is really adverse. This is shown by the ground upon which Judge Drummond put his decision. "It was objected also," (he says, p. 368,) "that the sale of the road under the foreclosure proceedings put an end to the contract, but, as has already been stated, the purchaser confirmed, ratified and adopted the contract, and *so became a party to it* by ratification; and although in one sense it was a different company from that which originally made the contract, still, as it operated the same line of road, the same necessity existed for the use of the telegraph line, and it availed itself of the benefits of that line by ratifying the contract, and it *thereby* became bound by whatever obligations rested upon its predecessors by that act of ratification and of use." At p. 368, the Judge says, "that the receivers of The Ohio and Mississippi Rail*way* Company, which was a reorganization of The Ohio and Mississippi Rail*road* Company, and became the purchaser of its property (the last named company having made the contract in question with the Western Union Telegraph Company), ratified, confirmed and adopted the contract, and seem to have acted upon *the theory* that the contract was still in force as against the railway company." Here is a clear implication that, in the judgment of Judge Drummond, the contract was not in force after the foreclosure proceedings. And the sole ground upon which he bases his decision is, that the purchaser under those proceedings, by his own vol-

untary act, *ratified, confirmed and adopted the contract, with the assent of the other contracting party*, The Western Union Telegraph Company, and so became a party to it, and proceeded to use the property under it; and in that way availed itself of the benefits of the telegraph line; and in that way, and in that way only, became bound by whatever obligations rested upon its predecessor. It must be borne in mind that the objection referred to by Judge Drummond was made by The Atlantic and Pacific Telegraph Company, and not by The Western Union Telegraph Company. The *latter company assented to the adoption of the contract by the purchaser* and in the suit in which Judge Drummond's opinion was given, insisted upon its rights under the contract against the purchaser, who had adopted the same, and used the telegraph line which had been established on the line of the railroad, on the terms agreed upon between the parties to the contract. We have quoted from Judge Drummond's opinion all that relates to this branch of the case. Opposing counsel ask, "on what principle could Judge Drummond have held that this contract between the railroad company and the telegraph company, made after the execution of the mortgage, was within the mortgage, and thus binding on the mortgagees, receiver and purchaser, except that, although lying in grant by the railroad company (made by the railroad company to the telegraph company), and its benefits existing in the covenant to pay rent, it was in equity a substantial addition to the estate granted?" Now, in the first place, as we have seen from Judge Drummond's opinion, he did *not* hold that the contract was within the mortgage, and thus binding on the mortgagees, receiver and purchaser. No one suggested in the case that the contract was within the mortgage and upon that ground was binding on the mortgagee; and so far from the Judge holding that it was binding on the

receiver, he at least strongly intimated that "*the theory*" upon which the receivers had acted that the contract was still in force as against the railway company (the mortgagor), and, therefore ratified, confirmed and approved it during their receivership, was a false theory; and he held the contract was binding upon the purchaser, *not* because it was binding upon the mortgagee and thus became binding upon the purchaser of his interest and estate at the sale in the foreclosure proceedings, but because, and only because, the purchaser had ratified, confirmed and approved of it, and taken the benefits of it, with the assent of the other party to the contract.

But, if the Judge had held that this contract was within the mortgage, the decision would not have been a precedent in this case, for the mortgagor did not, by the contract, undertake to carve an estate for ninety-nine years in the mortgaged property out of an estate in fee simple therein which he had already granted to the mortgagee, and impair the grant and prevent the mortgagee from exercising the right, which the mortgage in the case at bar gave the mortgagee, to enter upon and use, and *sell and convey*, the mortgaged property, free from an interest in or claim by the mortgagor *or any person claiming under him.*

The other cases cited by plaintiff's counsel, in this connection, are so clearly inapplicable to the case in hand that comment upon them is unnecessary.

VI.

Opposing counsel say, "our present contention is this: that as to the rents reserved in leases in existence at the time of the mortgage, they were covered by the language 'privileges, interest and estate of the first party appertaining

thereto, which the party of the first part now possesses;' and as to rents reserved in leases made thereafter, they are covered by the words 'privileges, interest and estate of the first party appertaining thereto, which the party of the first part may hereafter acquire;' and that having acquired a covenant running with the land, out of the estate for years, created by itself in favor of the Pan-Handle Company; after the date of the mortgage it has acquired 'privileges, interest and estate,' appertaining to the railway after the date of the mortgage, covered by the language just quoted."

Now, no lease had been made by the mortgagor prior to the mortgage. The only lease ever made by the mortgagor was the lease set out in the pleadings; and the rents reserved in this lease are evidently not covered by the words "privileges, interest and estate of the first party appertaining thereto, which the party of the first part may hereafter acquire," for the reason that the lessor had no right or power to make the lease for ninety-nine years, and the covenants of the lessee were not "privileges, interest or estate" of the lessor appertaining to *the property mortgaged*. The lessor was not entitled to enforce the covenants after the mortgagee should take possession under the mortgage, and sell and convey it without suit, or by suit should foreclose and sell the mortgaged property. Upon default of the mortgagor to pay an installment of interest, the mortgagees' rights under the mortgage became absolute. The mortgagees could instantly have ejected the mortgagor from the property. Their omission to do so did not validate the lease or confer upon the lessee any rights under the lease. The mortgagor thereafter had no "privilege, interest or estate" appertaining to the mortgaged property. He had only an equity of redemption. Subject to that, the mortgagees were the owners in fee simple of the property. The simple truth is, that the notion

that the rents reserved in the lease are covered by the mortgage, is based upon the assumption and fallacy that the mortgagor had the power, after making the mortgage, to carve out of the estate in fee simple thereby granted to the mortgagees, an estate for ninety-nine years, and make the mortgage subject and subordinate to it. If he had that right, then the instant the lease was made it became binding upon the mortgagees. It is well settled that a mortgage upon after-acquired property attaches to such property the instant it is acquired. Yet, even the adverse counsel says that could not be in this case: that until the mortgagee exercised an election whether he would ratify, confirm and adopt the lease, the mortgage did not attach to it. From that admission it follows that the claim under consideration is unfounded; for, if the rents reserved in the lease were covered by the mortgage, the mortgage, without any action upon the part of the mortgagee, fastened its clamp upon them the very moment the lease was made, and the only mode in which the rents could have been freed from the mortgage would have been by the execution of a release by the mortgagees.

The covenants of the lessee did not run with the land, because, if binding at all, the instant the lessor's rights in and to the mortgaged property ceased, the lease terminated and was of no effect.

The mortgagor did not acquire, as opposing counsel asserts, the right to collect rent as an appurtenance to its estate as owner of the fee simple of the railway (or as owner of the right of way of the railway), after the execution of the lease. And it did not acquire the right to collect rent after the condition of the mortgage became absolute. On the contrary, it had, by the terms of the mortgage, the right to occupy and use the mortgaged property itself or by a tenant, until the happening of that event, but no longer. The words

"privileges, interest and estate appertaining to the railway," are surplusage. Whatever "privileges, interest and estate appertaining to the railway," which the mortgagor owned at the date of the mortgage, or which it might thereafter acquire, were covered by the grant without these words. The draughtsman inserted them only out of abundant caution. So, also, the clause that the mortgagor should be permitted to "possess and operate, manage and enjoy the railway with its appurtenances and appendages, and to take and use its rents, income, profits and issues thereof, as if the mortgage deed had not been made," until default upon his part, was inserted merely out of the draughtsman's abundant caution. This clause gave the mortgagor no rights which he would not have had if it had been omitted. Surely no lawyer will seriously try to maintain that the legal effect of the insertion of either or both of the above clauses was to confer upon the mortgagor the power or right to make a lease of the railway and its appurtenances, and the franchise to maintain and operate it, for ninety-nine years.

VII.

The trustees of the bondholders undoubtedly had a right to the possession of the mortgaged property and to all income they could derive from its use, from and after the time the mortgagor made default; and the lessee was bound, on demand, to surrender such possession to them. But he had no more right, as the authorities before cited abundantly show, to compel the lessee to become his tenant, and to pay rent to him, than the lessee would have had a right to coerce the mortgage to accept the lessee as his tenant.

The theory of opposing counsel that a mortgagee of a railroad is entitled to the accruing income which grows out of

personal contracts made by the company before default, and before the filing of the bill, is not sustained by authority. But even if that theory were law, it would by no means sustain the position upon which the plaintiff's claim is founded, viz., that a railroad company, after it has made a deed of its property in fee simple to secure its indebtedness, and in terms gives the mortgagee not only the right to enter upon and use the property after default, but also the right to sell and convey it free from any and all claims or interest of the mortgagor and of all persons claiming under him, may carve out of the estate in fee simple so granted an estate for ninety-nine years and vest it absolutely in a stranger. A mortgage-creditor's right to the income of a railroad after the mortgagor's default, is one thing; a claim by him to compel the tenant of the mortgagor to remain in possession under a lease which was made after the mortgage, and is void after the mortgagor's default, is quite another and different thing.

VIII.

The covenant of further assurance did not operate to confer upon the mortgagor the right to make the lease; and if the deed which the mortgagee asked the president of the mortgagor to execute, had been executed and delivered, it would not have brought the lease under the operation of the mortgage. This covenant is in these words: "And the said party of the first part hereby covenants to execute and deliver any further suitable conveyance or conveyances that may be requisite for carrying into effect the object of these presents, particularly for the more perfect assurance of any property hereafter acquired by the party of the first part, and included in this deed." Now, I think it has been shown that instead of carrying into effect the object of the grant to the mortga-

gees of an estate in fee simple, with the right in them to take possession of and use, and sell and convey in fee simple, the mortgaged property, free from any claim of the mortgagor, or of any person or persons claiming under it, the covenant of further assurance, if its legal effect were such as opposing counsel contend it is, would impair and to a large extent defeat the grant to the mortgagees and the rights, title and powers conveyed to them by the mortgage. I think it has been also shown that the covenants of the lessee are not "property included in *the description in this deed.*" I will not re-argue either of these points. I submit it is plain that the covenant of further assurance cannot cut any figure in this case.

IX.

In answer to our position that the lease was not mortgaged and that the lessee never agreed to become the tenant of the mortgagee, and therefore that the latter is not entitled to a decree for its specific performance, opposing counsel say: "FIRST. It does not lie in the mouth of the Pan-Handle Company to say, 'we will not pay the bondholders,' when, by the very terms of the lease, it agreed to avoid the default by keeping the coupons paid, notwithstanding net earnings might fail to reach that end. The Pan-Handle Company has promised, in the most solemn form, that the facts now present should not exist."

We cannot comprehend on what ground this assertion is founded. Neither the bondholders nor their trustees were parties to nor bound by the lease. The bondholders could have empowered their trustees under the mortgage to become parties to the lease, but they did not. No consideration moved from them to the Pan-Handle Company for its agreement to advance the needful means to the mortgagor to ena-

ble the latter to pay the coupons as they matured, whenever net earnings might fail to be sufficient to pay them. That promise was not made to the bondholders or their trustees. It was a mere personal executory promise. Suppose the lease had not been set aside as to the future, by the decree of Jefferson Common Pleas, and the coupons were paid until the principal of the bonds should become payable, and the mortgagor had failed to pay the debt, the trustees of the bondholders could, and no doubt would, proceed to sell the property under the power to sell and convey it, or to obtain a decree of foreclosure and sale. The Pan-Handle did not agree to advance to the mortgagor money to pay the principal of the debt secured by the bonds. And if it had advanced millions of money to enable the mortgagor to pay the coupons, it could not have objected to such foreclosure and sale of the mortgaged property; and it would have lost all the money so advanced to pay the coupons. As before said, the principal of the bonds will be payable seventy years before the term under the lease, according to its provisions, will expire. Why could not the lessee of the mortgagor have prevented the sale of the property by or on the application of the mortgagees? For the reason that the mortgagor had no right to make the lease, and it was therefore not binding on the mortgagees. For the same reason the lease was not binding upon the lessee. There never was any privity of contract or of estate between the mortgagees and the lessee, and therefore neither can enforce it against the other. It is therefore idle to urge that it does not lie in the mouth of the Pan-Handle Company to say, "we will not pay the bondholders." That is just as idle as it would be for the Pan-Handle Company to urge against a foreclosure and sale under the mortgage upon the mortgagor's default to pay the principal of the bonds, that such sale would terminate and

make void the lease seventy years prior to the expiration of the lessee's term, according to the provisions of the lease, and that the lessee had advanced to the mortgagor large sums of money, from time to time, to enable it to pay the coupons.

X.

The adverse counsel claim, *secondly*, that "the facts of this case establish an existing attornment or its equitable equivalent." It is asserted that they show that the rental was paid to the bondholders by the lessee. We deny this assertion. The facts of the case show that whenever the earnings of the road were insufficient to pay the coupons, the lessee advanced to the mortgagor the needful means to pay them, charging such advances in open account against the mortgagor, to be returned out of subsequent earnings. The *form* in which the advances were made does not affect the rights or liabilities of any one. For some years after the making of the mortgage, the coupon interest was advanced by the Pan-Handle Company to the mortgagor, according to the contract between them, by the former sending the amount so advanced to "Moran Brothers," a partnership carrying on the business of bankers in the city of New York, the interest being sent to them as such bankers because the coupons were, by the terms of the bonds, payable in that city. The money so advanced to the mortgagor was transmitted by the Pan-Handle Company under an arrangement with the Muskingum Valley Company. Therefore, in sending the money to Moran Brothers, the Pan-Handle Company acted as the agent of the Muskingum Valley Company, and Moran Brothers, in receiving the money and paying it to the bondholders, were the agents of the Muskingum Valley Company. Upon sending the money to "Moran Brothers,"

the covenant of the Pan-Handle Company to advance to the Muskingum Valley Company was discharged: and if "Moran Brothers" had failed to pay it to the bondholders, the Muskingum Valley Company could have maintained an action against them for such default. But it is really immaterial whose agents "Moran Brothers" were. The money was transmitted to them by an arrangement between the Muskingum Valley Company and the Pan-Handle Company, in performance of the covenant of the latter to advance it to the former, to enable it to pay interest on its debt. It was not sent to Moran as trustee under the mortgage; nor was it sent to Moran in his individual character; but it was sent to "Moran Brothers," as New York bankers, to be by them disbursed for the Muskingum Valley Company. It was not sent to the bondholders or the agents of the bondholders. The bondholders did not receive the money as rent. On the contrary, they received it *as interest* due from the Muskingum Valley Company to them upon their bonds.

The facts of the case do not show, as opposing counsel assert, that the covenant in question was conceded by the lessee for the benefit of the mortgagee, at the instance of the trustees of the mortgage. J. Edgar Thompson was one of the trustees until the twenty-seventh day of May, 1874, when he departed this life. He had nothing to do with the making of the lease, and Moran had nothing to do with it in his capacity of trustee. He was a stockholder and a director in the lessor company, and acted as such in whatever he did concerning the making of the lease. His action in that behalf bound him in no other capacity. The covenant was for the benefit of the mortgagor. As a stockholder, Moran, in common with the other stockholders, was interested in getting a lease on as favorable terms as possible to their company, and as a director it was his *duty* to labor to that end.

If the intention had been to make the lease binding upon Moran and Thompson, as trustees of the mortgage, they would have endeavored to obtain authority from their *cestius que trustent* to become parties to it, so that it would have been binding upon both trustees and beneficiaries, and if such authority had been given, the trustees would have become parties to the lease. Without express authority from the bondholders, the trustees would have had no right to become parties to the lease, and thereby bind the bondholders. The trustees could not alter the provisions or legal effect of the mortgage, without special authority from the bondholders. Moran was but one of the bondholders. As one of the trustees of the other bondholders, he had no authority except such as the mortgage conferred upon him. The concurrent action of both of the trustees and all of the bondholders was necessary in order to effect an alteration in either the terms or legal effect of the mortgage. The very terms of the grant and the provisions in the mortgage to enable them to carry the grant into practical effect, would have excluded any authority on the part of the trustees to join with the mortgagor in making the lease. They had no authority to convey or assign an estate for ninety-nine years in the property which had been conveyed to them in fee simple, and upon trust, to be executed by taking possession of and managing and selling and conveying the entire property and estate. And if they could have done so, they could not, under the statute of frauds, have conveyed or assigned such estate by parol. But they made no assignment or conveyance of any interest in the fee simple, so that neither the question of power nor the mode of its exercise arises.

The adverse counsel say: "The correspondence between Messler and Scott, on the one side, and Moran on the other,

together with the formal action of the Board of Directors of the Pan-Handle Company, withdrawing all effort to cancel the lease which was the result of the suit brought by Moran, as trustee of the mortgage, to prevent its cancellation, is further evidence of an acceptance by the lessee company of the bondholders as their lessor, and an agreement to continue performance by payments to them." We think it is clear that this position cannot be sustained. The only legal effect of the correspondence, and the formal action of the Board of Directors of the Pan-Handle Company, was simply to *suspend* further proceedings in pursuance of the action which had been theretofore taken by the Board, looking towards a cancellation of the lease. The following was the order of the Board, viz.: "The matter of the cancellation of the lease of the Cincinnati and Muskingum Valley R'y being brought before the Board, it was ordered that further proceedings in pursuance of the action heretofore taken be *suspended*." This order would not have prevented such further proceedings, at a subsequent time. The correspondence concerning the cancellation of the lease was between Moran and Messler, as president of the *lessor* company only. The president of the Pan-Handle Company did and said nothing. By passing the above order the Board of Directors did not, as counsel suggest, give up "*all attempt*" to cancel the lease. Surely no one will seriously try to maintain that the order is evidence of an acceptance by the lessee company of the bondholders as their lessor, and an *agreement* to continue performance by *payments* to them as landlord. The legal relations, and legal rights, and legal liabilities of the parties were precisely the same after the order was made as they were before. As to the Muskingum Valley Company, Moran demanded that it should execute a deed of further assurance; but it declined to do so. What became of Moran's suit, does not appear from the testimony. It seems from

the parol testimony that the Muskingum Valley Company was the only defendant. The record is not in evidence.

The statement of opposing counsel that "the truth is that the only point of difference between *the parties to this case*, which ever existed, has been whether the lessee company should provide for the payment of the interest on the coupons due the bondholders of the lessor," is incorrect. In the negotiations for the lease, the directors of the lessor company, through Moran, who was one of the Board, urged the president of the lessee company to consent to the insertion, in the proposed lease, of a covenant absolutely binding that company to *pay* the semi-annual interest. This was refused; and finally he consented to the clause by which the lessee bound itself to advance to the lessor the "needful means" to enable the lessor to pay any coupons as they became due, whenever the net income of the railway was not sufficient to pay it in full, charging any such advance over the net earnings in open account, to be returned out of the subsequent earnings, and not otherwise. As already pointed out, neither the bondholders nor their trustees were parties to the negotiations or the lease. The covenant of the lessee company as made was merely to advance or loan money to the lessor company, and not a covenant to pay money without a provision for reimbursement or repayment. Whether any such advances or loans would be required was uncertain, according to the terms of the covenant.

XI.

Plaintiff's counsel say: "It will be time enough to consider what the lessee company may hereafter do—whether it will be required to make further attornment or not to a purchaser—when the sale shall have been made and the con-

firmed purchaser has become grantee of the reversion." This suggestion "gives away" all that precedes it in the brief on the subject of attornment. For, if the bondholders actually and legally became the landlords of the Pan Handle Company, under the lease, and the decree setting the lease aside is of no effect, then there is an end of this matter; the lease will continue in force and be operative to all intents and purposes until the expiration of the term of ninety-nine years, unless it be canceled by mutual agreement of parties. But if the bondholders did not become the landlords of the Pan Handle Company, the lease terminated upon the rendition of said decree, and if that decree had never been rendered, the lease would have terminated whenever the mortgagees exercised their rights under the mortgage after default by the mortgagor. Furthermore, the remedy which the plaintiff asks the court to administer, and which it is the sole object of the brief of his counsel to show he is entitled to, is a sale of not only what is described in the prayer of the bill as "all the estate and reversion of the lessor," but also of "the benefit of the lease, and the right to receive the rents accruing upon the lease, and to enforce the performance of its covenants." Now, if the remedy which the court is asked to grant, be administered, the lessee company will be imperatively "required to make *further* attornment to the purchaser." The purchase price will necessarily be based upon the decree of the court founded upon their decision and finding that the lease was mortgaged, and, therefore, that by the decree of foreclosure and sale, it will not terminate and become void, but will continue in force for the full term of ninety-nine years, and that the purchaser will become the landlord of the lessee and may enforce the covenants therein. Such is the prayer of the bill. The purchaser, under such a decree as the complainant asks for, will become entitled to

the net earnings of the railroad, and the lessee will be compelled to recognize him as its landlord, keep possession of the railroad, and pay the net earnings to him, etc. This suggestion of opposing counsel shows that in their judgments the lease is not a part of the property or rights mortgaged. They seem to think that the Pan Handle Company has, in some way or other, and to a limited extent only, attorned to the complainant, and thus, so far as *they* are concerned, they are entitled to compel it to perform the covenants of the lease until the mortgaged property is sold. We have, we think, shown that the Pan Handle Company has not in any way attorned to the complainant. But if it could have made such a special and limited attornment as that suggested, the complainant would not have been entitled to any decree excepting one foreclosing the mortgagor's equity of redemption and directing the sale of the mortgaged property and the franchise to maintain and operate the railroad. If, for any reason, the lease did not terminate under the operation of the decree canceling it, then upon the execution of such decree of foreclosure and sale, the lease would be of no further effect, and the purchaser would be entitled, upon confirmation of the sale, to the possession of the railroad and the franchise to maintain and operate it. The decree in this case will necessarily determine whether the purchaser will become the landlord of the Pan Handle Company, and, of course, whether that company will become the tenant of the purchaser. By making the above suggestion, counsel for plaintiff expose how vague and unsubstantial the theory of the plaintiff's case really is. I submit that unless the complainant can demonstrate that the lease was mortgaged, so that the very instant it was made the mortgage attached to it, without any action upon the part of the trustee of the bondholders, he is not entitled to any relief excepting a decree of foreclosure and sale.

XII.

No rent has been paid to the bondholders. They have received interest, not rent. Therefore the question whether or not the mere payment of rent by tenant of mortgagor to mortgagee, is a good attornment, does not arise. At pages — — we have cited authorities holding that it does not.

XIII.

The unqualified proposition of opposing counsel, that "attornment is not required by the laws of Ohio," is, we submit, manifestly incorrect. *Masury* v. *Southworth*, 9 Ohio St., 340, which counsel cite to sustain it, by no means goes to that extent. The court only decided that where a lessor makes an assignment of his reversion, and also of the benefits of the covenants in a lease, the assignee thereby becomes the party beneficially interested in the lease, and can maintain an action in his own name for the breach of such covenants. That ruling does not affect the case in hand. Here there is no assignment of the reversion; so that the only way in which the relation of landlord and tenant could have been created between the lessee and mortgagee would have been by mutual agreement between them.

The assertion that "attornment was never required by the common law of the State for any purpose," seems strange, in view of the decision in *Crawford* v. *Chapman*, 17 Ohio, 450. In that case the court *held* that the grantee of the reversion cannot maintain an action of covenant in his own name against a lessee upon an express covenant contained in the lease for the payment of rent. The ground of the ruling was that there was no privity of contract between the lessee and an assignee of the lessor, and that at law choses in action were not assignable, and none but parties or privies to ex-

press covenants were bound by them, or could take advantage of them. At common law, where the *lessee* assigned his whole term or leasehold interest, the covenant to pay rent ran with the land so as to charge the lessee's assignee, upon the ground of the *privity of estate* between such an assignee and the lessor. So, as we have seen, where the mortgage is subsequent to the lease, the rent passes as incident to the reversion which, and which only, is mortgaged. But where the mortgage is made first, the lessee is never tenant to the mortgagee; there is no privity of estate or of contract between them.

XIV.

After entry by a mortgagee, an attornment by the mortgagor's tenant does not create a tenancy for the residue of the term, but only from year to year. This is the rule laid down in the text books. Opposing counsel cite *Austin* v. *Ahearne*, 61 N. Y., 6, determined by the commission, as holding a contrary doctrine. Mr. Taylor, in the third edition of his work on Landlord and Tenant, notices the case cited, and says in note 2 to § 442: "In *Austin* v. *Ahearne*, 61 N. Y., 6, it is strenuously contended that an attornment is a recognition of the existing title, and not a new tenancy, and hence it is concluded that thereby a title to all rent in arrear passes to the assignee, and it is even maintained, though *obiter*, that this applies on an attornment by a mortgagor's tenant to the mortgagee. But this is clearly otherwise." That case did not involve any question growing out of the making of a lease by a mortgagor subsequently to the mortgage, and what Commissioner Dwight said is, as Mr. Taylor remarks, mere *dicta*. In Jones on Mortgages, the rule on this subject is stated as Mr. Taylor states it. The author says, § 776: "A mortgagor cannot make a lease of the

mortgaged premises which will be binding upon the mortgagee. Upon a breach of the condition the mortgagee may enter, and treat the lessee as a trespasser, and, without notice, bring ejectment. If the mortgagee, *after entry*, accepts rent from such lessee, the relation of landlord and tenant is thereby created, but this tenancy will be deemed one from year to year, and not for the term of the original lease. The mortgagee can no longer treat the lessee as a *trespasser*." And an examination of the cases show that these authors state the rule correctly. But discussion of this question is superfluous, because there never has been an entry by the bondholders, and there has been no attornment by the lessee.

"If a person who has an estate borrows money on it upon mortgage, and the mortgagor afterwards grants a lease of the property to a tenant, *e. g.*, for 21 years, that lease being made after the mortgage, cannot be set up by the tenant to prevent the mortgagee from recovering the possession of property, and the mortgagee may put the tenant out of possession by ejectment, and the only remedy the tenant has for being thus put out of possession is against the mortgagor. But if instead of the mortgagee turning the tenant out of possession, he consents to take the tenant as his tenant, the mortgagee will not thereby set up the 21 years' lease, but will make the tenant his tenant from year to year only."

Hughes v. *Bucknell*, 8 Car. & P., 566.

XV.

The remedy demanded by the plaintiff can not be granted for a reason not as yet stated. Upon a decree for a sale of the railroad and appurtenances the property must be appraised by three disinterested freeholders, and the appraisement

must be of the entire estate; and a sale cannot be made under the decree for less than two-thirds of such appraisement.

"In Ohio, a sale is always ordered in foreclosure cases. R. S., § 5316. There must be an appraisement of the real value of the property in money. R. S., § 5389—for this section applies to mortgages, R. S., § 5373—and there can be no deduction in the appraisement for incumbrances, but the appraisement must be of the entire estate. *Baird* v. *Kirtland*, 8 Ohio, 21; *Commercial B'k* v. *Western Reserve B'k*, 11 Ohio, 444, 450; *Fosdick's Lessee* v. *Risk*, 15 Ohio, 84, 106. And the sale cannot be for less than two-thirds the appraisement, § 5391.

"The consequence is obvious. If prior incumbrances are not cut off no bidders will give a minimum of two-thirds the value of the entire estate, with several mortgages to pay off in addition, and the junior incumbrancer is helpless, unless he is able to pay up the earlier liens.

"Nor would it be possible for the appraisers to examine the title and allow for prior incumbrances, for their value could be determined often only after examining witnesses as to the amount of interest or principal already paid, and deciding questions of law as to the validity of possible defenses; and if such prior incumbrance happens to be an indemnity mortgage, its amount would be contingent on considerations inextricable except to a court." 1 Bates's Pleading and Practice, 584.

The above provisions apply to mortgages executed by railroad companies as well as mortgages made by natural persons. In either case the mortgaged property must be sold according to the rules governing the sale of real estate, and must therefore be appraised as the statute provides, and cannot be sold for less than two-thirds of the appraisement. *Coe*

v. *Col., Piqua & Ind. R. R. Co.*, 10 Ohio St., 373, seventh proposition in syllabus, and pp. 407–8 of the opinion.

These provisions were a part of the law of the contract between the mortgagor and mortgagees when the mortgage which the plaintiff seeks to foreclose was executed; and they are therefore as obligatory upon this court as they would have been upon a court of the State, had the plaintiff filed his petition therein.

Brice v. *Ins. Co.*, 96 U. S., 627;
Orris v. *Powell*, 98 *id.*, 176;
Swift v. *Smith*, 102 *id.*, 442.

It follows that this court cannot order a sale of the mortgaged premises, subject to the incumbrance of the lease.

On the first of January, 1886, the defendant, The Cincinnati and Muskingum Valley Railway Company, resumed possession and control of its entire railway (printed record, pp. 137–8), in obedience to the said decree of the Court of Common Pleas of Jefferson county, and has since enjoyed and operated the same.

The adverse counsel claimed at the oral argument that, under § 3400 of the Rev. Sts. of Ohio, a sale of a railroad under a decree of foreclosure and sale can be made without an appraisement. I was surprised at this claim. The section referred to manifestly provides for a sale of a railroad when such sale is made under and in pursuance of "a reorganization agreement." The history and context as well as the language of the section show that such was its object and effect. The section was originally section eight of an act passed April 11, 1861 (Swan and Critchfield's Statutes of Ohio, p. 127). The provisions of the act are embodied in the Revised Statutes of the State, in Chapter 2, concerning railroad companies, under the heading "reorganization."

Section 3393 provides as follows:

"When proceedings are pending in any court for the sale of the road of a company, under a mortgage or deed of trust, and two-thirds in interest of the creditors and two-thirds in interest of the stockholders of the company agree, in writing, upon a plan for the readjustment or capitalization of the debt and stock of the company, the court shall render judgment against the company for the amount due and in arrear upon such securities, which judgment shall, from its rendition, become a lien on all the property embraced in such securities, and upon all the franchises and powers of the company, including its franchise to be and act as a corporation, conferred by the charter and the amendments to the charter of the company, and upon a sale had under such judgment, and a purchase at such sale by trustees, on behalf of the parties to such agreement, appointed by the agreement, all the property so bound by the judgment, including said franchises, shall vest in such trustees; but every such agreement shall provide that the unsecured debts of the company incurred for repairs or running expenses, shall be paid in money, or bonds of the reorganized company of the highest class issued, as hereinafter provided; and a copy of the agreement shall be filed in such court, before the rendition of the judgment."

Section 3394 provides for a meeting of such creditors, and the proceedings thereat, to organize the new company. Section 3395 provides what must be certified to the Secretary of State concerning the new company as so organized. Section 3396 provides what shall be property and powers of the new company upon such reorganization, and a conveyance by the purchasing trustees under section 3393. Section 3397 provides as to further powers of the new company, authorizing it, among other things, to assume certain debts of the original company, and secure same by mortgage. Section 3398 provides that the lien of such mortgage shall be post-

poned to the lien of judgments of a certain kind. Section 3399 provides that "the provisions of the seven preceding and the next succeeding sections shall extend and apply to companies whose railroads are partly within and partly without this State," etc. The next succeeding section is said section 3400, which reads as follows:

"Railroads, and other property mortgaged therewith by such company, may, if the court deems it expedient, be sold without appraisement, at judicial sales under judgments upon such mortgage; but, in such case, in order to prevent sacrifices, and protect the interests of all concerned, the court shall fix a minimum sum, below which no such sale shall be made, and, in order to fix that amount, the court may, if it deems it expedient to do so, refer the subject to a master, with instructions to take testimony, and report the same."

Now, the words "railroads and other property mortgaged therewith by *such company*," manifestly mean railroads and other property mortgaged therewith by the company described in section 3393, and the sale referred to is a sale under the provisions of that section.

It is therefore clear that section 3400 has no application to this case.

As before pointed out, when a lease is made before a mortgage, the reversion only is granted, and the rent reserved in the lease passes to the mortgagee as incident to the reversion assigned and conveyed to the mortgagee; so that there is no difficulty in effecting a judicial sale in a suit to foreclose and sell under the mortgage, according to the provisions of the Ohio Statute. In such case the mortgaged property is appraised, and the purchaser acquires the estate of the mortgagee, and as incident thereto the rents reserved under the lease. He therefore can afford to buy under the appraise-

ment. But when a mortgage is made before a lease, the reversion is not mortgaged but the entire estate in fee simple, and the rent reserved does not pass to the mortgagee; and therefore the only mode in which a sale can be made in such case under the Ohio system of appraisements, is to sell the mortgaged property—the entire estate mortgaged.

XVI.

The legal effect of the decree of the Court of Common Pleas of Jefferson county, Ohio, was to render the lease inoperative and of no effect from and after the rendition of the decree. The decree was entered on the twenty-fourth of November, 1885, and the demised property was surrendered by the Pan-Handle Company to the Valley Company on the first of January, 1886, in obedience to the decree. The decree is based on the opinion of the court that the relief to which the plaintiffs in the suit, as minority stockholders in the Pan-Handle Company, were entitled, was a decree canceling the lease as to the future. Hence the operative effect of the decree was wholly prospective, without disturbing anything in the past. The decree is still in force. An attempt was made by one Henry to appeal from the decree, but he was not a party to the suit, and his attempt to make himself a party was fifteen days after the decree was entered of record, and the appellate court dismissed the pretended appeal at his costs. Henry afterwards filed a petition in error in the Supreme Court, the object of which is to reverse the order dismissing his pretended appeal, but the only effect of his proceeding is to stay the execution of said order during the pendency of the proceeding in error. The order last made by the Supreme Court in the proceeding expressly so provides. The order dismissing the appeal, there-

fore, remains in force, and the decree canceling the lease stands in full effect.

XVII.

The case of *P., C. & St. L. R'y Co.* v. *The Columbus, Chicago & Indiana Central R'y Co.*, 8 Biss., 456, cited by opposing counsel, was an action for relief in respect of a lease made by the latter to the former company. The complainant alleged in its bill that the lessor had not performed certain stipulations of the lease on its part, and prayed for a rescission and an account, and that the lessor corporation resume possession of the railroad and other demised property, free and discharged from the lease, "*unless the defendant shall, within some reasonable time to be fixed by the court, specifically perform its said covenant aforesaid* and *arrange, adjust and classify, and fund its said indebtedness*, as by the terms of said agreement of February 1, 1870, it is bound to do."

It was an action to compel specific performance of the lease by lessor, in certain particulars. Judge HARLAN (p. 491) says: "It would be inconsistent with the whole form of the suit to do more at this time than to decree a performance of the agreement by the lessor." He did accordingly order "that the lessor corporation may have until the first day of January next (eight months) within which to arrange, provide for, adjust and classify its indebtedness as required by the amended lease of February 1, 1870, and in default thereof the complainant has leave to move for a decree rescinding the contract between the parties, upon such terms and with such provisions for a settlement of accounts as may be equitable." In conclusion Judge Harlan said (p. 492): "It will be observed that I have said nothing upon the point earnestly discussed by counsel as to the rights of bondholders against the P., C. & St. L. R'y Co. and the Penna. R.

R. Co. by reason of the guaranty given by the latter, and by reason of the published letter signed by the President of both companies at or about the date of the actual execution of the amended lease. I have omitted any consideration of that question because, in my judgment, it is not necessarily involved in the issues made in this case. What may now be the rights of such bondholders as against those companies, or what may be their rights in the event of a rescission of the contract of leasing, need not, and, indeed, cannot properly be determined in this case. That may be the subject of distinct litigation between them and such companies, or either of them. The right of the complainant to a rescission as between it and the lessor corporation, is not affected by the obligation, if any, of the complainant, or of its guarantor, to pay the bonds issued or purchased upon the faith of the leases and of the letter issued in December, 1874. I make no expression of opinion as to whether such obligation exists upon the part of either complainant or its guarantor."

This decree of Judge Harlan was made on August 6, 1879. Previously to its rendition Roosevelt and Fosdick, the trustees of the $15,0000,000 mortgage made by the lessor of the company, had filed their answer to the bill of the P., C. & St. L. Co., and also a cross-bill in that case showing that they had been appointed by the U. S. Circuit Courts for the District of Indiana, Southern District of Ohio, and Northern District of Illinois, receivers of the property covered by the lease, and of the earnings and income, rents, issues and profits thereof, with directions from said courts respectively not to disturb the possession of the premises by the P., C. & St. L. Co., but to collect and receive the rental payable by the lessee or its guarantor. They also set out the letter addressed to them as trustees, and to Parkhurst, trustee, by the Presidents of the P., C. & St. L. Co., and Penna. R. R.

Co., in which it is stated that those companies would, by the terms of the lease, pay the interest on the $15,821,000 of bonds secured by the mortgages of which they were trustees, and authorizing said trustees to inform the holders of said bonds, and to give such further public notice as they might think proper, that such interest would be regularly paid by The P., C. & St. L. Co. or The Penna. R. R. Co., according to the tenor of said contract and lease. They further showed that the lessor company had, by order of said courts, assigned, transferred and set over to them, as trustees and receivers, all claims and demands, present and prospective, in favor of the lessor company against the lessee company and its guarantor.

The grounds (among others) upon which the P., C. & St. L. Co. sought to be relieved from its covenant to pay rent were that the lease was void *ab initio*, and that the lessor company had not performed its covenant to reduce and classify its debts. No issue was made as to whether or not the trustees of the mortgages had succeeded to all the rights and remedies which the lessor company had under the lease. The P., C. & St. L. Co. claimed that the lessor itself could not have enforced payment of rent because it had not performed the covenants of the lease on its part. And it is plain, I think, from the concluding portion of Judge Harlan's decision which I have quoted, that he was of the opinion that the rights of the bondholders, if any they had, as against the P., C. & St. L. Co. and its guarantor, were created by, and rested wholly upon, the aforesaid letters of those companies, taken in connection with the leases, and the action of the parties taken on the faith of the same; and not at all upon the theory that the *leases themselves* could, at the option of the bondholders, be continued in force for their full terms for the benefit of the bondholders. For, had Judge Harlan

entertained that theory, he would not have said "the right of the complainant to a rescission as between it and the lessor corporation, is not affected by the obligation, if any, of the complainant, or of its guarantor, to pay the bonds issued or purchased upon the faith of the leases and of the letter issued in December, 1874."

The *obligation* here referred to is not the obligation created by the lease alone, but the obligation created by the letter in connection with the lease, and the issuing and purchase of bonds on the faith of the same. The real ground of such obligation, if any, was the *estoppel* created by *the letter* and the acts of the bondholders on the faith of the statements contained in *it*.

The personal judgment for $2,769,574.90, rendered by Judge Harlan against the P., C. & St. L. Co. and its guarantor, was for unpaid rent which had accrued while the lessee remained in possession of the demised premises. The *fifth* clause of that decree, copied by opposing counsel in this case, on page 42 of their brief, required the lessee to pay "by way of rental for the premises thereby demised, to the said Roosevelt and Fosdick, or their successors, as receivers, so long as their said receivership shall continue," etc.

This was *not* an adjudication that the lease passed to the mortgagees by virtue of the mortgage, nor that the mortgagees were entitled to enforce the lease against the lessee, nor that a sale of the demised premises could be so ordered or made as to continue the lease in force, and thereby create, against the will of the lessee, the relation of landlord and tenant between the purchaser and the lessee. It merely required the lessee to pay the receivers, instead of the lessor, for the use of the premises so long as the receivership continued. It did not determine what the *status* of the parties would be upon the termination of the receivership, and a sale of the premises.

From this decree of Judge Harlan's, which was rendered February 16, 1880, all parties appealed to the Supreme Court of the United States. Up to this point the whole litigation, and the questions involved, related solely to the validity or invalidity of the lease, and whether or not the lessee could be required to perform on its part before the lessor should have classified and reduced its debt to $15,821,000. No foreclosure of the mortgage or sale of the mortgaged premises had been ordered.

Pending the appeal, all interests were harmonized, and an agreement of reorganization was proposed by all parties acting in harmony. This agreement bears date July 1, 1882. The sixteenth article of that agreement provided that the lease and amended lease should be absolutely canceled. Subsequently to this agreement, and in order to carry it into execution, and by consent of all parties, the decree for a sale of the mortgaged property was made by Judge Drummond in the Circuit Court, at Chicago, on November 15, 1882, containing the clause quoted by opposing counsel, on page 44 of his brief. This clause was put in by counsel in order that no person, who by any possibility could have any interest in the property which was to be sold, or in the lease, could thereafter raise any objection. The question of the right of the mortgagee to have the lease sold, or to continue it in force after a sale of the mortgaged property, was never submitted for determination or decided by the court at any stage of the case. Hence, the proceedings in that case furnish no precedent for any such relief as is asked for by the complainant in this case.

XVIII.

It is said that the P., C. & St. L. R'y Co., by collusion with Jeans and others, procured the suit in which the decree

rescinding the lease was rendered to be prosecuted. This assertion is not sustained by the evidence.

It shows that Jeans protested against the making of the lease, and that the boards of township trustees who were plaintiffs in the suit, and who, under the statutes of Ohio, are public corporations, did not know, until shortly before the suit was begun, of the existence of the facts upon which their title in equity to have relief from the further performance of the lease by the P., C. & St. L. R'y Co. depended. When they were informed of the facts, they employed legal counsel to commence the suit. They did not do so at the instance of that company. The company refused, on demand made by the stockholders. (Deft's Pr. Ev., p. 55.) The fact that Mr. Brooks, who has been general counsel for the P., C. & St. L. R'y Co. about nine years, and Mr. Sherrard, who has been one of the directors thereof several years, employed the same counsel, does not prove the alleged collusion. Each of them have been for many years, as they still are, large stockholders in that company. They paid, out of their own pockets, full value for their stock, and they had the same right, as every other shareholder, to seek, and, if possible, to obtain, by suit, relief from further injury to their rights and interests as shareholders in the lessee company.

The President of the lessor company addressed a letter to the plaintiff in the suit here, Moran, as trustee of the mortgage bondholders, requesting them to furnish money for the purpose of defending the suit of Jeans and others. They declined to comply with the request, or to appear and defend. (Pr. Rec., 263, 72, 73, 74.) Moran called Henry's attention to the matter. [*Ibid.*] Moran could have employed his own counsel to make the defense. He was requested to do that. There is, therefore, nothing in the sug-

gestion of his counsel in this suit that if he had availed himself of the offer of President Messler a proper defense might not have been made.

But this is an immaterial issue, for, if the plaintiff never acquired any interest in the lease, he cannot make the question. The lessor and lessee could have voluntarily dissolved the lease; and, therefore, the decree dissolving it is binding upon them and they have carried it into execution.

If the plaintiff had acquired a legal interest in the lease, and had been a necessary party to the suit, he might have been entitled to allege that the decree was collusive.

Furthermore, even if the decree had not been rendered at all, the plaintiff would not have been entitled to a decree for the sale of the mortgaged property, subject to the lease, and adjudging that the lease remain in force after such sale.

XIX.

An attempt has been made to prove that Mr. Estep, who, with Judge Ranney, was counsel for Jeans et al. in the suit in which the decree canceling the lease *in futuro* was rendered, prosecuted the suit under a champertous agreement with his clients. This attempt has signally failed. There is no truth in the charge. The agreement with the township trustees, who are plaintiffs, is in writing. (Printed record, p. 210.) It provides for the employment of Mr. Estep as their attorney to prosecute a suit to obtain a rescission of the lease in question, so that the stock held by these townships in the lessee company may be made of some value; and that Mr. Estep's charges should not be more than $5 per 100 shares of stock so held, unless the lease were set aside; in which event he was to accept such compensation for his services as the trustees may deem reasonable. Mr. Estep's

employment by Mr. Jeans was on substantially the same terms. (Pr. rec., p. 149). The other parties are liable to him for a reasonable compensation.

There was no contract, understanding or agreement by which the trustees of either of the townships, or any of the other plaintiffs, were to be indemnified against the payment of the attorney's fees, or in the event the case were lost, against the payment of costs. (Printed rec., 149–150).

Under the agreement with the township trustees, Mr. Estep's compensation was to vary, depending upon the result of the case. This was perfectly lawful and in every respect unobjectionable. An attorney may lawfully engage to prosecute a suit either for a fixed compensation or a percentage upon the recovery. *Wright* v. *Tibbetts*, 91 U. S., 252; or for a certain proportion of the recovery only.

Jeffries v. *Mut. Life Ins. Co.*, 110 U. S., 305;
McPherson v. *Cox*, 96 U. S., 404.

Even if the pretended champertous agreement had been made, the fact would not have availed the plaintiff in this suit. He could not have used it for any purpose.

XX.

The testimony of James M. McKee, one of the holders of five of the mortgage bonds, has been taken for the purpose of showing that he purchased them after he had been informed the lease had been made, and that he placed reliance upon the guarantee which he says he *had been informed* was contained or implied in the lease for the security and ultimate *payment of the bonds*. No other bondholder testifies to this effect. And it will be noted that Mr. McKee had been misinformed as to the provision in the lease. There is no guarantee "contained or implied in the lease for the security and

ultimate payment of the bonds." The provision was that the lessee would *advance* to the lessor the means to enable the lessor to pay *the interest* on the bonds, in the event that the net income should not be sufficient for that purpose, and charge the same to the lessor in open account.

Mr. McKee's evidence is immaterial. He knew, or was bound to know, as every other purchaser of the bonds was, that the mortgagee was not a party to the lease, and was not an assignee thereof, and had no interest therein; and he was bound to know that, upon the breach of the condition of the mortgage and a foreclosure and sale of the mortgaged premises, the lease and all rights and liabilities thereunder would determine and be at an end. He was also bound to know that the parties to the lease had a right to terminate the same by mutual consent, and that the stockholders of the lessee corporation had a right to commence a suit and obtain a decree cancelling the lease, upon showing the existence of any ground entitling them to such a decree.

"Where a debt already exists from one person to another, a promise by a third person *to pay* such debt, being primarily for *the benefit of the original debtor*, and to relieve *him* from liability to pay it (there being no novation), *he* has a right of action against the promiser for his own indemnity, and *the original creditors cannot sue*."

"Where an association agreed with another association, in consideration of the performance of certain acts by the latter, to *pay* certain bonds issued by the latter: *Held*, that the bondholders had no right of action to enforce such agreement against the first named association, especially when they could not perform the stipulated acts."

Second Nat. Bank v. *Grand Lodge*, 98 U. S., 123.

The doctrine that a promise by one person made to another for the benefit of a third, may be enforced by the latter,

although he was not privy to the transaction, is limited to cases in which the promise is *expressly* stated to be for his benefit, or in which he has received money or property *out of which* to pay the obligation assumed.

1 Jones on Mortgages, § 761.

The covenant in the lease in this case to advance the needful means, upon the happening of a contingency, to enable the mortgagor to pay interest on the bonds, is not expressly stated to be for the benefit of the plaintiff, and the covenantor has received no money or property *out of which* to pay any part of the indebtedness due the plaintiff. If it ever was obligatory at all, it was a covenant to lend enough money, in the event contemplated, to the Valley Company to enable it to pay its coupons; and was only binding and operative between the parties to the lease; and, of course, was only operative between them so long as the lease was in force. Each and all of the covenants in the lease were executory, concurrent and mutual. The covenants were an executory contract *inter partes*. (*National Bank* v. *Grand Lodge*, *supra*.)

XXI.

The plaintiff asks in effect, by his bill, as his counsel state he does, for a decree for the specific enforcement and performance of the lease on the part of the Pan-Handle Company. We maintain finally that even had not the decree canceling the lease been rendered, and did not the objections hereinbefore stated against his right to such a decree exist, and did not absolute impediments to the granting and execution of such a decree stand in the way, the plaintiff would not, for several reasons, be entitled to it.

First. The claim is inequitable.

In 1873 the Pennsylvania Railroad Company and Moran, being the owners of about $1,300,000 seven per cent. bonds, which were worthless, and which they knew to be worthless, combined in a scheme to obtain payment of interest on those bonds—they having afterwards increased the amount of them to $1,500,000. Moran and his friends had held their share of these worthless bonds for nearly twenty years prior to 1873. The railroad property on which a mortgage to the bondholders had been made, had by experience proven to be incapable of earning interest on them; and twice in that period of twenty years the railroad had been sold, reorganized, and finally turned up the third time with the identical original issue of one million three hundred thousand dollars seven per cent. bonds; all back interest having been drowned out of sight or reproduced in the form of good-for-nothing stock. The name of this constitutionally pauper company was The Cincinnati and Muskingum Valley Railway Company. The Pennsylvania Railroad Company was then owner of about eight-thirteenths of its stock and Moran and other individuals of about five-thirteenths; the Pennsylvania Railroad Company also owning a little more than half of said bonds; Moran and other individuals owning the remainder. The record does not show any sales of the bonds since the first of January, 1873, excepting about thirty-five thousand dollars. The present ownership is therefore about as it was fifteen years ago.

The Pennsylvania Railroad Company at the same time, January, 1873, controlled the P., C. & St. L. R'y Co., by means of ownership of its capital stock.

The Pennsylvania Railroad Company holding, then, the P., C. & St. L. R'y Co. in the hollow of one hand, and the Cincinnati & Muskingum Valley Railway Company in the hollow of the other, and a majority of the worthless bonds of

the last named company in its pocket, the Pan-Handle Company was made lessee of the insolvent company and required to advance money to pay interest on the bonds. The minority stockholders of the lessee company were helpless against the stock vote of the Pennsylvania Railroad Company, and they have ever since been helpless without the aid of the courts of justice.

It would have been fair to predict in 1873, judging from the prior history of the bonds, that the lease would prove an outrageous burden upon the minority stockholders of the Pan-Handle Company. And how has experience verified such prediction? More than a million dollars of the earnings of the P., C. & St. L. R'y Co. have, by means of the lease, passed to the Pennsylvania Railroad Company. Moran, and a few other persons holding the bonds of the insolvent C. & M. V. R'y Co. These hondholders have thus for fifteen years helped themselves to money out of the treasury of the P., C. & St. L. R'y Co.; and not until within the last two years did the minority stockholders of that company learn that the majority stockholder therein, the Pennsylvania Railroad Company, also controlled the C. & M. V. R'y Co., and as bondholder of the latter company was the party mainly benefited by the operation. When the minority stockholders did learn these facts they lost no time in appealing to the courts for relief.

So far as the Pennsylvania Railroad Company is concerned, it cannot deny the facts stated nor set up a word in defense of the transaction which operated so unjustly and injuriously to the minority stockholders. As to Moran and his associates, they make a feeble effort to claim that during the year next preceding the lease, the demised road earned interest on the bonds. But the testimony of Mr. Becker, Chief Engineer, and of Mr. Renner, Auditor, shows that

the property was not maintained as it should have been, and that its future earnings were anticipated, in order to make a showing of capacity to make net earnings to pay interest.

An effort is also made to claim that some of the bonds were purchased upon the faith of the lease. But the proof shows only sales to the amount of thirty-five thousand dollars of bonds. The loose statement of Mr. Borg, a Wall street broker, as to sales amounting to one hundred thousand dollars, must be compared with his cross-examination on this subject, which proves that his loose general statement-in-chief are misleading. But, as we have before pointed out, no one had a right to buy the bonds on the supposition that the lease was mortgaged; that the very terms and provisions of the mortgage show it did not and could not embrace the lease.

Even if the lease had contained an express provision to pay the bondholders the interest on the bonds, the above consideration would, in such case, have shown that the plaintiff is not entitled to a decree in equity for the specific performance of the lease. If he or any one could have maintained any action at all it would have been *an action at law*. The opinion of Judge Harlan above referred to shows that. But the lease does not require the lessee to pay interest; on the contrary, it simply provides that in case of deficiency of earnings, it will "advance the needful means to pay the coupons at maturity, charging any such advance over the net earnings in open account, to be returned out of the subsequent earnings and not otherwise." It may be suggested that the language quoted is a little bit ambiguous. If it be so, it is well suited to the nature of the transaction. But it is too plain for argument, that in no event does it bind the lessee company to the endless burden of paying interest on the bonds.

Upon the question as to the equities between the parties,

the general nature and character of the transaction is not only important, but is decisive. The lease is an operating contract wherein the lessee covenants to pay *all* earnings to the lessor, after deducting only the expenses of maintenance and operation. In no event is there a chance for profit to the amount of a dollar for the lessee. *All net earnings go to the lessor*, from year to year. If there are losses under such a contract, who, in equity, ought to bear them? The lessor who takes all net earnings when there are any, or the lessee who never gained a dollar by the lease? To this question, it is submitted, a court of equity can give but one answer, viz.: The party who received all net earnings should meet a deficit in revenue.

If the Pan-Handle Company had made an unconditional promise to pay interest on bonds of the Valley Company, the promise would have been without consideration, and could not have been enforced.

Treating the clause as an agreement to make loans, from time to time upon the happening of the contingency therein mentioned, to be repaid out of subsequent net earnings of the road, and not otherwise, a court of equity will not decree its specific performance, after experience for many years has demonstrated that the loans or advances can not be repaid in the only mode in which the parties have provided it might be.

I submit, then, that irrespective of all other considerations, the nature and character of the lease, in connection with the means by which the parties to it were constrained to enter into it, nominally, by the Pennsylvania Railroad Company, is conclusive against the plaintiff's right to a decree for the specific performance of the lease. The lease sought to be enforced was a fraud upon the minority stockholders because their own associate majority stockholder who created it was

the party to be mainly benefited by it, and was so benefited, *not* as a stockholder in the companies in whose name the lease was made, *but only as a bondholder in the lessor company*. The majority stockholder usurped or abused his power as a stockholder in order to feather its nest as a bondholder of the lessor company. The lease provided that current net earnings should be paid to the lessor, and that whenever a deficit should occur, the lessee should make it up. A stipulation that the lessee should pay the interest, whether the property earned it or not, would have been such a gross outrage upon the minority stockholders as to be shocking upon its face. If this court were to render such a decree as the plaintiff asks may be rendered, the injustice and outrage will be the same as such a stipulation would have been. The Court of Common Pleas of Jefferson county, Ohio, in the exercise of its chancery jurisdiction, found that it would be grossly unjust to the minority stockholders to permit the lease to be further performed, and therefore, without disturbing anything in the past, decreed that in the future the lease should be of no effect. We submit that this finding and decree were right.

Mr. Estep, in his brief, will cite and comment upon the authorities upon this branch of the case. I therefore omit them.

Secondly. The *lessor* company has failed to perform the covenants of the lease upon its part, and it is utterly unable to perform them.

Its obligation to furnish money to pay for additions and improvements to the leased property is unquestionable. The very terms of the lease so provide. The fact that it is insolvent and cannot fulfill said obligation, and the fact that, by reason of its failure and inability to fulfill such obligation,

the Pan-Handle Company had to pay over one hundred and forty thousand dollars, are indisputable facts. These facts, of themselves, constitute a complete defense against the plaintiff's claim for specific performance of the lease. And yet it is insignificant, as compared with the enormous injustice which would result to the minority stockholders from a decree compelling their company to specifically perform said lease for ninety-nine years.

The suggestion of opposing counsel that the right of action of the minority stockholders to a decree canceling the lease is barred by alleged laches and the Ohio statute of limitations, has nothing to operate upon. The plaintiff is asking a decree for specific performance, which the defendants resist. He must show affirmatively that the chancellor should grant him such affirmative relief. Neither laches nor the statute of limitations are, or could have been, pleaded in this suit. But if this were a suit by the minority stockholders, lapse of time could not be set up to defeat their title in equity to protection against the lease, if it were still in force. So long as they continued ignorant of the facts, constituting a fraud upon their rights, there could be no willful *laches*.

Third. The Pan-Handle Company had no power to enter into the covenant to advance money to the Valley Company.

Mr. Estep will argue this proposition, with others which I have not touched.

Respectfully submitted,

Richard A. and Joseph HARRISON, OLDS & MARSH.

COLUMBUS, OHIO, ~~September, 1887.~~ October, 1893.